SENATE BILL No. 47

January 18, 2017, Introduced by Senators ZORN and NOFS 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 format for the reporting of data including, but not limited to, patient identifiers, the name of the controlled substance
dispensed, the date of dispensing, the quantity dispensed, the
prescriber, and the dispenser. The department shall require a
veterinarian, pharmacist, or dispensing prescriber to utilize the
electronic data 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 to the
department. The rules promulgated under this subsection shall exempt both is subject
to both of the following:

(A) the department's authority does not include the authority
to promulgate or enforce a rule that exempts any of the following
circumstances from the reporting requirements under this section:

(i) (a) the except as otherwise provided in subdivision (b),
the administration of a controlled substance directly to a patient.

(ii) (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.

(iii) the dispensing or administration of buprenorphine or a
drug containing buprenorphine and methadone.

(B) the rules promulgated under this subsection must exempt
from the reporting requirements under this section the dispensing
of a controlled substance in all of the following:

(i) an emergency department, emergency room, or trauma center
OF A HOSPITAL THAT IS LICENSED UNDER ARTICLE 17.

(ii) A HOSPICE.

(iii) AN ONCOLOGY DEPARTMENT OF A HOSPITAL THAT IS LICENSED UNDER ARTICLE 17.

(iv) A HOSPITAL THAT IS LICENSED UNDER ARTICLE 17 THAT ADMINISTERS THE CONTROLLED SUBSTANCE TO AN INPATIENT.

(2) Notwithstanding any practitioner-patient privilege, the director of the department may provide data 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.

(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.

(3) Except as otherwise provided in this part, 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 or any report under
subsection (2) containing any patient identifiers of the system
from the department shall not provide it 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 (1) is mandatory for a veterinarian, pharmacist,
and dispensing prescriber. However, the department may issue a
written waiver of the electronic reporting requirement to a
veterinarian, pharmacist, 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 DEPARTMENT OF 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 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 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 and any report containing any patient identifiers obtained from the data are not public records and are not subject to DISCLOSURE UNDER 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 MONITORING 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 MONITORING 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) R 338.3162E OF THE MICHIGAN ADMINISTRATIVE CODE IS RESCINDED.

(13) 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.

(C) "HOSPICE" MEANS THAT TERM AS DEFINED IN SECTION 20106.

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