

Act No. 246
Public Acts of 2017
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2017**

Introduced by Reps. Bellino and Griffin

ENROLLED HOUSE BILL No. 4408

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 16221 and 16226 (MCL 333.16221 and 333.16226), section 16221 as amended by 2017 PA 75 and section 16226 as amended by 2017 PA 81, and by adding sections 7303b and 7303c.

The People of the State of Michigan enact:

Sec. 7303b. (1) Except as otherwise provided in this section, beginning June 1, 2018, a prescriber shall comply with all of the following before issuing for a minor the first prescription in a single course of treatment for a controlled substance containing an opioid, regardless of whether the prescriber modifies the dosage during the course of treatment:

(a) Discuss all of the following with the minor, and with the minor’s parent or guardian or with another adult authorized to consent to the minor’s medical treatment:

(i) The risks of addiction and overdose associated with the controlled substance.

(ii) The increased risk of addiction to a controlled substance to an individual who is suffering from both mental and substance abuse disorders.

(iii) The danger of taking a controlled substance containing an opioid with a benzodiazepine, alcohol, or another central nervous system depressant.

(iv) Any other information in the patient counseling information section of the label for the controlled substance that is required under 21 CFR 201.57(c)(18).

(b) Obtain the signature of the minor's parent or guardian, or, subject to subsection (3), the signature of another adult authorized to consent to the minor's medical treatment, on a start talking consent form. The prescriber shall include the signed start talking consent form in the minor's medical record.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) If the minor's treatment is associated with or incident to a medical emergency.

(b) If the minor's treatment is associated with or incident to a surgery, regardless of whether the surgery is performed on an inpatient or outpatient basis.

(c) If, in the prescriber's professional judgment, fulfilling the requirements of subsection (1) would be detrimental to the minor's health or safety.

(d) If the minor's treatment is rendered in a hospice as that term is defined in section 20106 or an oncology department of a hospital that is licensed under article 17.

(e) If the prescriber is issuing the prescription for the minor at the time of discharge from a facility described in subdivision (d).

(f) If the consent of the minor's parent or guardian is not legally required for the minor to obtain treatment.

(3) If the individual signing a start talking consent form is another adult authorized to consent to the minor's medical treatment, the prescriber shall not prescribe more than a single, 72-hour supply of the controlled substance described in subsection (1) to the minor.

(4) A start talking consent form must be on a form that is separate from any other document that a prescriber uses to obtain the informed consent for the treatment of a minor and must contain all of the following:

(a) The name and quantity of the controlled substance being prescribed for the minor and the amount of the initial dose.

(b) A statement indicating that a controlled substance is a drug or other substance that the United States Drug Enforcement Administration has identified as having a potential for abuse.

(c) A statement certifying that the prescriber discussed with the minor, and with the minor's parent or guardian or with another adult authorized to consent to the minor's medical treatment, the topics described in subsection (1).

(d) The number of refills, if any, that are authorized by the prescription.

(e) A space for the signature of the minor's parent or guardian, or the signature of another adult authorized to consent to the minor's medical treatment, and a space to indicate the date that the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment, signed the form.

(5) As used in this section:

(a) "Another adult authorized to consent to the minor's medical treatment" means an adult to whom a minor's parent or guardian has given written authorization to consent to the minor's medical treatment.

(b) "Medical emergency" means a situation that, in the prescriber's good-faith medical judgment, creates an immediate threat of serious risk to the life or physical health of the minor.

(c) "Minor" means an individual under 18 years of age who is not emancipated under section 4 of 1968 PA 293, MCL 722.4.

(d) "Start talking consent form" means the form described in subsection (4).

Sec. 7303c. (1) Except as otherwise provided in this section, beginning June 1, 2018, before a controlled substance that is an opioid is prescribed to a patient, a licensed prescriber or another health professional shall provide information on all of the following to the patient or the patient's representative:

(a) The danger of opioid addiction.

(b) How to properly dispose of an expired, unused, or unwanted controlled substance.

(c) That the delivery of a controlled substance is a felony under Michigan law.

(d) If the patient is pregnant or is a female of reproductive age, the short- and long-term effects of exposing a fetus to a controlled substance, including, but not limited to, neonatal abstinence syndrome.

(2) After providing the information described in subsection (1), the licensed prescriber or other health professional shall obtain the signature of the patient or the patient's representative on a form prescribed by the department of health and human services, indicating that the patient or the patient's representative has received the information described in subsection (1). The licensed prescriber or other health professional shall include the signed form in the patient's medical or clinical record.

(3) This section does not apply if the controlled substance described in subsection (1) is prescribed for inpatient use.

(4) As used in this section:

(a) “Health professional” means an individual who is licensed, registered, or otherwise authorized to engage in a health profession under article 15.

(b) “Patient” means an individual who receives health care from the licensed prescriber.

(c) “Patient’s representative” means a guardian of a patient, if appointed, or a parent, guardian, or person acting in loco parentis, if the patient is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis.

Sec. 16221. The department shall investigate any allegation that 1 or more of the grounds for disciplinary subcommittee action under this section exist, and may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order the taking of relevant testimony. After its investigation, the department shall provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) Except as otherwise specifically provided in this section, a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully engage in the practice of the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance use disorder as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(iii) Mental or physical inability reasonably related to and adversely affecting the licensee’s or registrant’s ability to practice in a safe and competent manner.

(iv) Declaration of mental incompetence by a court of competent jurisdiction.

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or conviction of any felony other than a felony listed or described in another subparagraph of this subdivision. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee’s or registrant’s ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(xiii) Conviction of a criminal offense under section 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321, 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

(xiv) Conviction of a violation of section 136 or 136a of the Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A certified copy of the court record is conclusive evidence of the conviction.

(c) Prohibited acts, consisting of 1 or more of the following:

(i) Fraud or deceit in obtaining or renewing a license or registration.

(ii) Permitting a license or registration to be used by an unauthorized person.

(iii) Practice outside the scope of a license.

(iv) Obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

(d) Except as otherwise specifically provided in this section, unethical business practices, consisting of 1 or more of the following:

(i) False or misleading advertising.

(ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

(iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.

(e) Except as otherwise specifically provided in this section, unprofessional conduct, consisting of 1 or more of the following:

(i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.

(ii) Betrayal of a professional confidence.

(iii) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.

(iv) Either of the following:

(A) A requirement by a licensee other than a physician or a registrant that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee or registrant has a financial interest.

(B) A referral by a physician for a designated health service that violates 42 USC 1395nn or a regulation promulgated under that section. For purposes of this subdivision, 42 USC 1395nn and the regulations promulgated under that section as they exist on June 3, 2002 are incorporated by reference. A disciplinary subcommittee shall apply 42 USC 1395nn and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If 42 USC 1395nn or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision by reference. If the department does promulgate rules to incorporate the revision by reference, the department shall not make any changes to the revision. As used in this sub-subparagraph, "designated health service" means that term as defined in 42 USC 1395nn and the regulations promulgated under that section and "physician" means that term as defined in sections 17001 and 17501.

(v) For a physician who makes referrals under 42 USC 1395nn or a regulation promulgated under that section, refusing to accept a reasonable proportion of patients eligible for Medicaid and refusing to accept payment from Medicaid or Medicare as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest. A physician who owns all or part of a facility in which he or she provides surgical services is not subject to this subparagraph if a referred surgical procedure he or she performs in the facility is not reimbursed at a minimum of the appropriate Medicaid or Medicare outpatient fee schedule, including the combined technical and professional components.

(vi) Any conduct by a health professional with a patient while he or she is acting within the health profession for which he or she is licensed or registered, including conduct initiated by a patient or to which the patient consents, that is sexual or may reasonably be interpreted as sexual, including, but not limited to, sexual intercourse, kissing in a sexual manner, or touching of a body part for any purpose other than appropriate examination, treatment, or comfort.

(vii) Offering to provide practice-related services, such as drugs, in exchange for sexual favors.

(f) Failure to notify under section 16222(3) or (4).

(g) Failure to report a change of name or mailing address as required in section 16192.

(h) A violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.

(i) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article, article 7, or article 8, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222(1) or 16223.

(j) Failure to pay an installment of an assessment levied under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, within 60 days after notice by the appropriate board.

(k) A violation of section 17013 or 17513.

(l) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.

(m) A violation of section 17015, 17015a, 17017, 17515, or 17517.

- (n) A violation of section 17016 or 17516.
- (o) Failure to comply with section 9206(3).
- (p) A violation of section 5654 or 5655.
- (q) A violation of section 16274.
- (r) A violation of section 17020 or 17520.
- (s) A violation of the medical records access act, 2004 PA 47, MCL 333.26261 to 333.26271.
- (t) A violation of section 17764(2).
- (u) Failure to comply with the terms of a practice agreement described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or 18047(2)(a) or (b).
- (v) A violation of section 7303b.

Sec. 16226. (1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221

Sanctions

Subdivision (a), (b)(i), (b)(ii), (b)(iii), (b)(iv), (b)(v), (b)(vi), (b)(vii), (b)(ix), (b)(x), (b)(xi), or (b)(xii)	Probation, limitation, denial, suspension, revocation, permanent revocation, restitution, or fine.
Subdivision (b)(viii)	Revocation, permanent revocation, or denial.
Subdivision (b)(xiii)	Permanent revocation for a violation described in subsection (5); otherwise, probation, limitation, denial, suspension, revocation, restitution, or fine.
Subdivision (b)(xiv)	Permanent revocation.
Subdivision (c)(i)	Denial, revocation, suspension, probation, limitation, or fine.
Subdivision (c)(ii)	Denial, suspension, revocation, restitution, or fine.
Subdivision (c)(iii)	Probation, denial, suspension, revocation, restitution, or fine.
Subdivision (c)(iv) or (d)(iii)	Fine, probation, denial, suspension, revocation, permanent revocation, or restitution.
Subdivision (d)(i) or (d)(ii)	Reprimand, fine, probation, denial, or restitution.
Subdivision (e)(i), (e)(iii), (e)(iv), (e)(v), (h), or (s)	Reprimand, fine, probation, limitation, suspension, revocation, permanent revocation, denial, or restitution.
Subdivision (e)(ii) or (i)	Reprimand, probation, suspension, revocation, permanent revocation, restitution, denial, or fine.
Subdivision (e)(vi) or (e)(vii)	Probation, suspension, revocation, limitation, denial, restitution, or fine.
Subdivision (f)	Reprimand, denial, limitation, probation, or fine.
Subdivision (g)	Reprimand or fine.
Subdivision (j)	Suspension or fine.
Subdivision (k), (p), or (r)	Reprimand, probation, suspension, revocation, permanent revocation, or fine.
Subdivision (l)	Reprimand, denial, or limitation.
Subdivision (m) or (o)	Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.
Subdivision (n)	Revocation or denial.
Subdivision (q)	Revocation.
Subdivision (t)	Revocation, permanent revocation, fine, or restitution.
Subdivision (u)	Denial, revocation, probation, suspension, limitation, reprimand, or fine.
Subdivision (v)	Probation, limitation, denial, fine, suspension, revocation, or permanent revocation.

(2) Determination of sanctions for violations under this section shall be made by a disciplinary subcommittee. If, during judicial review, the court of appeals determines that a final decision or order of a disciplinary subcommittee prejudices substantial rights of the petitioner for 1 or more of the grounds listed in section 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.306, and holds that the final decision or order is unlawful and is to be set aside, the court shall state on the record the reasons for the holding and may remand the case to the disciplinary subcommittee for further consideration.

(3) A disciplinary subcommittee may impose a fine in an amount that does not exceed \$250,000.00 for a violation of section 16221(a) or (b). A disciplinary subcommittee shall impose a fine of at least \$25,000.00 if the violation of section 16221(a) or (b) results in the death of 1 or more patients.

(4) A disciplinary subcommittee may require a licensee or registrant or an applicant for licensure or registration who has violated this article, article 7, or article 8 or a rule promulgated under this article, article 7, or article 8 to satisfactorily complete an educational program, a training program, or a treatment program, a mental, physical, or professional competence examination, or a combination of those programs and examinations.

(5) A disciplinary subcommittee shall impose the sanction of permanent revocation for a violation of section 16221(b)(xiii) if the violation occurred while the licensee or registrant was acting within the health profession for which he or she was licensed or registered.

(6) Except as otherwise provided in subsection (5) and this subsection, a disciplinary subcommittee shall not impose the sanction of permanent revocation under this section without a finding that the licensee or registrant engaged in a pattern of intentional acts of fraud or deceit resulting in personal financial gain to the licensee or registrant and harm to the health of patients under the licensee's or registrant's care. This subsection does not apply if a disciplinary subcommittee finds that a licensee or registrant has violated section 16221(b)(xiv).

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor