



HOUSE BILL No. 5407

(as amended May 22, 2014)

March 11, 2014, Introduced by Reps. Forlini, Graves, Lane, Yanez, Zorn, Crawford, Lauwers and Kowall and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 1106, 17745, 17751, 17754, and 17757 (MCL
333.1106, 333.17745, 333.17751, 333.17754, and 333.17757), section
1106 as amended by 2000 PA 58, sections 17745, 17751, and 17757 as
amended by 2013 PA 186, and section 17754 as amended by 2013 PA
268, and by adding sections 7421 and 17744b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1106. (1) "OPIOID ANTAGONIST" MEANS [NALOXONE HYDROCHLORIDE OR
ANY OTHER SIMILARLY ACTING AND EQUALLY SAFE DRUG APPROVED BY THE FEDERAL
FOOD AND DRUG ADMINISTRATION FOR THE TREATMENT OF DRUG OVERDOSE.

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(2) "OPIOID-RELATED OVERDOSE" MEANS A CONDITION, INCLUDING,
BUT NOT LIMITED TO, EXTREME PHYSICAL ILLNESS, DECREASED LEVEL OF

1 CONSCIOUSNESS, RESPIRATORY DEPRESSION, COMA, OR DEATH, THAT RESULTS
2 FROM THE CONSUMPTION OR USE OF AN OPIOID OR ANOTHER SUBSTANCE WITH
3 WHICH AN OPIOID WAS COMBINED OR THAT A LAYPERSON WOULD REASONABLY
4 BELIEVE TO BE AN OPIOID-RELATED OVERDOSE THAT REQUIRES MEDICAL
5 ASSISTANCE.

6 (3) ~~(1)~~—"Parentage registry" means the department's
7 compilation of data concerning children's parentage, which data the
8 department receives from any source, including, but not limited to,
9 a copy of an order of filiation from the circuit court or an
10 acknowledgment of paternity or parentage under this act, under
11 section 2114 of the estates and protected individuals code, 1998 PA
12 386, MCL 700.2114, or under the acknowledgment of parentage act,
13 1996 PA 305, MCL 722.1001 to 722.1013.

14 (4) ~~(2)~~—"Person" means an individual, partnership,
15 cooperative, association, private corporation, personal
16 representative, receiver, trustee, assignee, or other legal entity.
17 Person does not include a governmental entity unless specifically
18 provided.

19 SEC. 7421. BY FEBRUARY 1 EACH YEAR, THE DEPARTMENT SHALL
20 ASCERTAIN, DOCUMENT, AND PUBLISH A REPORT ON THE NUMBER, TRENDS,
21 PATTERNS, AND RISK FACTORS RELATED TO OPIOID-RELATED OVERDOSE
22 FATALITIES THAT OCCURRED IN THIS STATE IN THE PRECEDING CALENDAR
23 YEAR. THE DEPARTMENT SHALL INCLUDE IN THE REPORT INFORMATION ON
24 INTERVENTIONS THAT WOULD BE EFFECTIVE IN REDUCING THE RATE OF FATAL
25 OR NONFATAL OPIOID-RELATED OVERDOSES IN THIS STATE.

26 SEC. 17744B. (1) NOTWITHSTANDING ANY PROVISION OF THIS ACT TO
27 THE CONTRARY, A PRESCRIBER MAY ISSUE A PRESCRIPTION FOR AND A

1 DISPENSING PRESCRIBER OR PHARMACIST MAY DISPENSE AN OPIOID
2 ANTAGONIST TO ANY OF THE FOLLOWING:

3 (A) AN INDIVIDUAL PATIENT AT RISK OF EXPERIENCING AN OPIOID-
4 RELATED OVERDOSE.

5 (B) A FAMILY MEMBER, FRIEND, OR OTHER INDIVIDUAL IN A POSITION
6 TO ASSIST AN INDIVIDUAL AT RISK OF EXPERIENCING AN OPIOID-RELATED
7 OVERDOSE.

8 (C) A PERSON OTHER THAN AN INDIVIDUAL THAT MEETS ALL OF THE
9 FOLLOWING REQUIREMENTS:

10 (i) ACTS AT THE DIRECTION OF THE PRESCRIBER OR DISPENSING
11 PRESCRIBER.

12 (ii) UPON RECEIPT OF AN OPIOID ANTAGONIST, STORES THE OPIOID
13 ANTAGONIST IN COMPLIANCE WITH THIS PART.

14 (iii) DISPENSES OR ADMINISTERS AN OPIOID ANTAGONIST UNDER A
15 VALID PRESCRIPTION ISSUED TO AN INDIVIDUAL OR A PATIENT.

16 (iv) PERFORMS THE REQUIREMENTS UNDER THIS SUBSECTION WITHOUT
17 CHARGE OR COMPENSATION.

18 (2) WHEN ISSUING A PRESCRIPTION FOR OR DISPENSING AN OPIOID
19 ANTAGONIST AS AUTHORIZED UNDER THIS SECTION TO A PERSON OTHER THAN
20 A PATIENT, THE PRESCRIBER, DISPENSING PRESCRIBER, OR PHARMACIST, AS
21 APPROPRIATE, SHALL INSERT THE NAME OF THE PERSON AS THE NAME OF THE
22 PATIENT.

23 (3) NOTWITHSTANDING ANY PROVISION OF THIS ACT TO THE CONTRARY,
24 A PERSON THAT IS ACTING IN GOOD FAITH AND WITH REASONABLE CARE MAY
25 POSSESS AND DISPENSE AN OPIOID ANTAGONIST.

26 (4) A PRESCRIBER WHO ISSUES A PRESCRIPTION FOR OR A DISPENSING
27 PRESCRIBER OR PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST AS

1 AUTHORIZED UNDER THIS SECTION IS NOT LIABLE IN A CIVIL ACTION FOR A
2 PROPERLY STORED AND DISPENSED OPIOID ANTAGONIST THAT WAS A
3 PROXIMATE CAUSE OF INJURY OR DEATH TO AN INDIVIDUAL DUE TO THE
4 ADMINISTRATION OF OR FAILURE TO ADMINISTER THE OPIOID ANTAGONIST.

5 Sec. 17745. (1) Except as otherwise provided in this
6 subsection, a prescriber who wishes to dispense prescription drugs
7 shall obtain from the board a drug control license for each
8 location in which the storage and dispensing of prescription drugs
9 occur. A drug control license is not necessary if the dispensing
10 occurs in the emergency department, emergency room, or trauma
11 center of a hospital licensed under article 17 or if the dispensing
12 involves only the issuance of complimentary starter dose drugs.

13 (2) Except as otherwise provided in section 17744a **OR 17744B**,
14 a dispensing prescriber shall dispense prescription drugs only to
15 his or her own patients.

16 (3) A dispensing prescriber shall include in a patient's chart
17 or clinical record a complete record, including prescription drug
18 names, dosages, and quantities, of all prescription drugs dispensed
19 directly by the dispensing prescriber or indirectly under his or
20 her delegatory authority. If prescription drugs are dispensed under
21 the prescriber's delegatory authority, the delegatee who dispenses
22 the prescription drugs shall initial the patient's chart, clinical
23 record, or log of prescription drugs dispensed. In a patient's
24 chart or clinical record, a dispensing prescriber shall distinguish
25 between prescription drugs dispensed to the patient, prescription
26 drugs prescribed for the patient, and prescription drugs dispensed
27 or prescribed as authorized under section 17744a **OR 17744B**. A

1 dispensing prescriber shall retain information required under this
2 subsection for not less than 5 years after the information is
3 entered in the patient's chart or clinical record.

4 (4) A dispensing prescriber shall store prescription drugs
5 under conditions that will maintain their stability, integrity, and
6 effectiveness and will assure that the prescription drugs are free
7 of contamination, deterioration, and adulteration.

8 (5) A dispensing prescriber shall store prescription drugs in
9 a substantially constructed, securely lockable cabinet. Access to
10 the cabinet shall be limited to individuals authorized to dispense
11 prescription drugs in compliance with this part and article 7.

12 (6) Unless otherwise requested by a patient, a dispensing
13 prescriber shall dispense a prescription drug in a safety closure
14 container that complies with the poison prevention packaging act of
15 1970, 15 USC 1471 to 1477.

16 (7) A dispensing prescriber shall dispense a drug in a
17 container that bears a label containing all of the following
18 information:

19 (a) The name and address of the location from which the
20 prescription drug is dispensed.

21 (b) Except as otherwise authorized under section 17744a **OR**
22 **17744B**, the patient's name and record number.

23 (c) The date the prescription drug was dispensed.

24 (d) The prescriber's name or, if dispensed under the
25 prescriber's delegatory authority, the name of the delegatee.

26 (e) The directions for use.

27 (f) The name and strength of the prescription drug.

1 (g) The quantity dispensed.

2 (h) The expiration date of the prescription drug or the
3 statement required under section 17756.

4 (8) A dispensing prescriber who dispenses a complimentary
5 starter dose drug to a patient shall give the patient at least all
6 of the following information, either by dispensing the
7 complimentary starter dose drug to the patient in a container that
8 bears a label containing the information or by giving the patient a
9 written document that may include, but is not limited to, a
10 preprinted insert that comes with the complimentary starter dose
11 drug, that contains all of the following information:

12 (a) The name and strength of the complimentary starter dose
13 drug.

14 (b) Directions for the patient's use of the complimentary
15 starter dose drug.

16 (c) The expiration date of the complimentary starter dose drug
17 or the statement required under section 17756.

18 (9) The information required under subsection (8) is in
19 addition to, and does not supersede or modify, other state or
20 federal law regulating the labeling of prescription drugs.

21 (10) In addition to meeting the requirements of this part, a
22 dispensing prescriber who dispenses controlled substances shall
23 comply with section 7303a.

24 (11) The board may periodically inspect locations from which
25 prescription drugs are dispensed.

26 (12) The act, task, or function of dispensing prescription
27 drugs shall be delegated only as provided in this part and sections

1 16215, 17048, 17076, 17212, and 17548.

2 (13) A supervising physician may delegate in writing to a
3 pharmacist practicing in a hospital pharmacy within a hospital
4 licensed under article 17 the receipt of complimentary starter dose
5 drugs other than controlled substances as defined by article 7 or
6 federal law. When the delegated receipt of complimentary starter
7 dose drugs occurs, both the pharmacist's name and the supervising
8 physician's name shall be used, recorded, or otherwise indicated in
9 connection with each receipt. A pharmacist described in this
10 subsection may dispense a prescription for complimentary starter
11 dose drugs written or transmitted by facsimile, electronic
12 transmission, or other means of communication by a prescriber.

13 (14) As used in this section, "complimentary starter dose"
14 means a prescription drug packaged, dispensed, and distributed in
15 accordance with state and federal law that is provided to a
16 dispensing prescriber free of charge by a manufacturer or
17 distributor and dispensed free of charge by the dispensing
18 prescriber to his or her patients.

19 Sec. 17751. (1) A pharmacist shall not dispense a drug
20 requiring a prescription under the federal act or a law of this
21 state except under authority of an original prescription or an
22 equivalent record of an original prescription approved by the
23 board.

24 (2) Subject to subsection (5), a pharmacist may dispense a
25 prescription written and signed; written or created in an
26 electronic format, signed, and transmitted by facsimile; or
27 transmitted electronically or by other means of communication by a

1 physician prescriber or dentist prescriber in a state other than
2 Michigan, but not including a prescription for a controlled
3 substance as defined in section 7104 except under circumstances
4 described in section 17763(e), only if the pharmacist in the
5 exercise of his or her professional judgment determines all of the
6 following:

7 (a) Except as otherwise authorized under section 17744a **OR**
8 **17744B**, that the prescription was issued pursuant to an existing
9 physician-patient or dentist-patient relationship.

10 (b) That the prescription is authentic.

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

13 (3) A pharmacist or a prescriber shall dispense a prescription
14 only if the prescription falls within the scope of practice of the
15 prescriber.

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

18 (5) A pharmacist shall not dispense a drug or device under a
19 prescription transmitted by facsimile or created in electronic
20 format and printed out for use by the patient unless the document
21 is manually signed by the prescriber. This subsection does not
22 apply to a prescription that is transmitted by a computer to a
23 facsimile machine if that prescription complies with section 17754.

24 (6) After consultation with and agreement from the prescriber,
25 a pharmacist may add or change a patient's address, dosage form,
26 drug strength, drug quantity, directions for use, or issue date
27 with regard to a prescription. A pharmacist shall note the details

1 of the consultation and agreement required under this subsection on
2 the prescription and shall maintain that documentation with the
3 prescription as required in section 17752. A pharmacist shall not
4 change the patient's name, controlled substance prescribed unless
5 authorized to dispense a lower cost generically equivalent drug
6 product under section 17755, or the prescriber's signature with
7 regard to a prescription.

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

22 Sec. 17754. (1) Except as otherwise provided under article 7,
23 article 8, and the federal act, a prescription may be transmitted
24 electronically if the prescription is transmitted in compliance
25 with the health insurance portability and accountability act of
26 1996, Public Law 104-191, or regulations promulgated under that
27 act, 45 CFR parts 160 and 164, by a prescriber or his or her agent

1 and the data are not altered or modified in the transmission
2 process. The electronically transmitted prescription shall include
3 all of the following information:

4 (a) The name, address, and telephone number of the prescriber.

5 (b) Except as otherwise authorized under section 17744a **OR**
6 **17744B**, the full name of the patient for whom the prescription is
7 issued.

8 (c) An electronic signature or other identifier that
9 specifically identifies and authenticates the prescriber or his or
10 her agent.

11 (d) The time and date of the transmission.

12 (e) The identity of the pharmacy intended to receive the
13 transmission.

14 (f) Any other information required by the federal act or state
15 law.

16 (2) The electronic equipment or system utilized in the
17 transmission and communication of prescriptions shall provide
18 adequate confidentiality safeguards and be maintained to protect
19 patient confidentiality as required under any applicable federal
20 and state law and to ensure against unauthorized access. The
21 electronic transmission of a prescription shall be communicated in
22 a retrievable, recognizable form acceptable to the intended
23 recipient. The electronic form utilized in the transmission of a
24 prescription shall not include "dispense as written" or "d.a.w." as
25 the default setting.

26 (3) Before dispensing a prescription that is electronically
27 transmitted, the pharmacist shall exercise professional judgment

1 regarding the accuracy, validity, and authenticity of the
2 transmitted prescription.

3 (4) An electronically transmitted prescription that meets the
4 requirements of this section is the original prescription.

5 Sec. 17757. (1) Upon a request made in person or by telephone,
6 a pharmacist engaged in the business of selling drugs at retail
7 shall provide the current selling price of a drug dispensed by that
8 pharmacy or comparative current selling prices of generic and brand
9 name drugs dispensed by that pharmacy. The information shall be
10 provided to the person making the request before a drug is
11 dispensed to the person. A person who makes a request for price
12 information under this subsection is not obligated to purchase the
13 drug for which the price or comparative prices are requested.

14 (2) A pharmacist engaged in the business of selling drugs at
15 retail shall conspicuously display the notice described in
16 subsection (3) at each counter over which prescription drugs are
17 dispensed.

18 (3) The notice required under subsection (2) shall be in
19 substantially the following form:

20 NOTICE TO CONSUMERS

21 ABOUT PRESCRIPTION DRUGS

22 Under Michigan law, you have the right to find out the price
23 of a prescription drug before the pharmacist fills the
24 prescription. You are under no obligation to have the prescription
25 filled here and may use this price information to shop around at
26 other pharmacies. You may request price information in person or by
27 telephone.

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

3 Ask your pharmacist if a lower-cost generic drug is available
4 to fill your prescription. A generic drug contains the same
5 medicine as a brand name drug and is a suitable substitute in most
6 instances.

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

10 If you have questions about the drugs that have been
11 prescribed for you, ask your doctor or pharmacist for more
12 information.

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

17 (4) The notice required under subsection (2) shall also
18 contain the address and phone number of the board and the
19 department. The text of the notice shall be in at least 32-point
20 bold type and shall be printed on paper at least 11 inches by 17
21 inches in size. The notice may be printed on multiple pages.

22 (5) ~~A~~ **THE DEPARTMENT SHALL PROVIDE A** copy of the notice
23 required under subsection (2) ~~shall be provided to each licensee.~~
24 ~~by the department.~~ The department shall provide additional copies
25 if needed. A person may duplicate or reproduce the notice if the
26 duplication or reproduction is a true copy of the notice as
27 produced by the department, without any additions or deletions.

1 (6) The pharmacist shall furnish to the purchaser of a
2 prescription drug at the time the drug is delivered to the
3 purchaser a receipt evidencing the transactions, which contains all
4 of the following:

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

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

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

9 (d) The quantity dispensed, if applicable.

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

11 (f) The serial number of the prescription.

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

13 (h) The name of the prescriber or, if prescribed under the
14 prescriber's delegatory authority, the name of the delegatee.

15 (i) Except as otherwise authorized under section 17744a **OR**
16 **17744B**, the name of the patient for whom the drug was prescribed.

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

18 (7) The items required under subsection (6)(a), (b), and (c)
19 may be omitted by a pharmacist only if the omission is expressly
20 required by the prescriber. The pharmacist shall retain a copy of
21 each receipt for 90 days. The inclusion of the items required under
22 subsection (6) on the prescription container label is a valid
23 receipt to the purchaser. Including the items required under
24 subsection (6) on the written prescription form and retaining the
25 form constitutes retention of a copy of the receipt.

26 (8) The board may promulgate rules to implement this section.

27 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 97th Legislature are
2 enacted into law:

3 (a) Senate Bill No. 721.

4 (b) Senate Bill No. _____ or House Bill No. 5405 (request no.
5 04998'14).

6 (c) Senate Bill No. _____ or House Bill No. 5404 (request no.
7 04999'14).