SUBSTITUTE FOR

HOUSE BILL NO. 5326

A bill to amend 1978 PA 368, entitled

"Public health code,"

by amending sections 7333a, 7422, 17708, and 17757 (MCL 333.7333a, 333.7422, 333.17708, and 333.17757), section 7333a as amended by 2012 PA 44, section 7422 as added by 2014 PA 313, section 17708 as amended by 2016 PA 49, and section 17757 as amended by 2014 PA 525, and by adding section 17744e.

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, **AND** 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 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 incur any additional costs solely related to the transmission of data to the department. The rules promulgated under this subsection ~~shall~~ **MUST** exempt both of the following circumstances from the reporting requirements:

(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 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~~ **THAT** 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~~ **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~~ **THAT** 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,~~**2025,**] 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, **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~~ **THAT** 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~~ **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 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 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)] 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~~ **MEDICAID** contracted health plan, or any other person providing a plan of health benefits, coverage, or insurance subject to state insurance regulation.

Sec. 7422. A person that complies with section 17744b **OR 17744E** is not in violation of this article with regard to the prescribing, dispensing, possessing, or administering an opioid antagonist as authorized in ~~that section.~~**EITHER OF THOSE SECTIONS.**

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

(2) "Prescriber" means a licensed dentist, a licensed doctor of medicine, a licensed doctor of osteopathic medicine and surgery, a licensed doctor of podiatric medicine and surgery, a licensed optometrist certified under part 174 to administer and prescribe therapeutic pharmaceutical agents, a licensed veterinarian, or another licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or licensed doctor of osteopathic medicine and surgery.

(3) "Prescription" means an order by a prescriber to fill, compound, or dispense a drug or device written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication. An order transmitted in other than written or hard-copy form must be electronically recorded, printed, or written and immediately dated by the pharmacist, and that record ~~constitutes~~ **IS CONSIDERED** the original prescription. In a health facility or agency licensed under article 17 or other medical institution, an order for a drug or device in the patient's chart ~~constitutes~~ **IS CONSIDERED** for the purposes of this definition the original prescription. **FOR PURPOSES OF THIS PART, PRESCRIPTION ALSO INCLUDES A STANDING ORDER ISSUED BY THE CHIEF MEDICAL EXECUTIVE UNDER SECTION 17744E.** Subject to section 17751(2) and (5), prescription includes, but is not limited to, an order for a drug, not including a controlled substance as defined in section 7104 except under

circumstances described in section 17763(e), written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber licensed to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine in another state.

(4) "Prescription drug" means a drug to which 1 or more of the following apply:

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

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

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

SEC. 17744E. (1) THE CHIEF MEDICAL EXECUTIVE DESIGNATED UNDER SECTION 2202 MAY ISSUE A STANDING ORDER THAT DOES NOT IDENTIFY A PARTICULAR PATIENT AT THE TIME IT IS ISSUED FOR THE PURPOSE OF A PHARMACIST DISPENSING AN OPIOID ANTAGONIST TO AN INDIVIDUAL UNDER THIS SECTION.

(2) NOTWITHSTANDING ANY PROVISION OF THIS ACT TO THE CONTRARY, A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST TO ANY INDIVIDUAL PURSUANT TO A STANDING ORDER ISSUED BY THE CHIEF MEDICAL EXECUTIVE UNDER SUBSECTION (1) AND THE RULES PROMULGATED UNDER THIS SECTION.

(3) THE CHIEF MEDICAL EXECUTIVE DESIGNATED UNDER SECTION 2202 WHO ISSUES A STANDING ORDER FOR AN OPIOID ANTAGONIST UNDER THIS SECTION OR A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST AS AUTHORIZED UNDER THIS SECTION IS NOT LIABLE IN A CIVIL ACTION FOR A

PROPERLY STORED AND DISPENSED OPIOID ANTAGONIST THAT WAS A PROXIMATE CAUSE OF INJURY OR DEATH TO AN INDIVIDUAL DUE TO THE ADMINISTRATION OF OR FAILURE TO ADMINISTER THE OPIOID ANTAGONIST.

(4) THE DEPARTMENT OF HEALTH AND HUMAN SERVICES SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION.

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

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

(3) The notice required under subsection (2) ~~shall~~ **MUST** be in substantially the following form:

NOTICE TO CONSUMERS
ABOUT PRESCRIPTION DRUGS

Under Michigan law, you have the right to find out the price of a prescription drug before the pharmacist fills the prescription. You are under no obligation to have the prescription

filled here and may use this price information to shop around at other pharmacies. You may request price information in person or by telephone.

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

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

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

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

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

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

(5) The department shall provide a copy of the notice required under subsection (2) to each licensee. The department shall provide

additional copies if needed. A person may duplicate or reproduce the notice if the duplication or reproduction is a true copy of the notice as produced by the department, without any additions or deletions.

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

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

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

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

(d) The quantity dispensed, if applicable.

(e) The name and address of the pharmacy.

(f) The serial number of the prescription **OR A REFERENCE TO THE STANDING ORDER ISSUED UNDER SECTION 17744E**.

(g) The date the prescription was originally dispensed.

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

(i) Except as otherwise authorized under section 5110, 17744a, ~~or~~ 17744b, **OR 17744E,** the name of the patient for whom the drug was prescribed.

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

(7) The items required under subsection (6)(a), (b), and (c) may be omitted from a receipt by a pharmacist only if the omission is expressly required by the prescriber. The pharmacist shall retain a copy of each receipt furnished under subsection (6) for 90

days. The inclusion of the items required under subsection (6) on the prescription container label is a valid receipt to the purchaser. Including the items required under subsection (6) on the written prescription form and retaining the form constitutes retention of a copy of the receipt.

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

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