Act No. 231
Public Acts of 2001
Approved by the Governor
January 3, 2002
Filed with the Secretary of State
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STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001

Introduced by Reps. George, Woronchak, Howell, Julian, Richardville, Stewart, Basham, Raczkowski, Vander Veen, Scranton, Patterson, Ehardt, Jelinek, Voorhees, Shulman, Plakas, Anderson, Shackleton, Vear, Stamas, Pappageorge, Meyer, Kuipers, Middaugh, Hummel, Gilbert, Allen, Kowall, Kooiman, Cassis, Pumford, Cameron Brown, Sanborn, Newell, Van Woerkom, DeVuyst, Birkholz, Faunce and Neumann

ENROLLED HOUSE BILL No. 5260

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 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 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 section 7333 (MCL 333.7333), as amended by 1993 PA 138, and by adding section 7333a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 7333. (1) As used in this section, "good faith" means the prescribing or dispensing of a controlled substance by a practitioner licensed under section 7303 in the regular course of professional treatment to or for an individual who is under treatment by the practitioner for a pathology or condition other than that individual's physical or psychological dependence upon or addiction to a controlled substance, except as provided in this article. Application of good faith to a pharmacist means the dispensing of a controlled substance pursuant to a prescriber's order which, in the professional judgment of the pharmacist, is lawful. The pharmacist shall be guided by nationally accepted professional standards including, but not limited to, all of the following, in making the judgment:

(a) Lack of consistency in the doctor-patient relationship.

(b) Frequency of prescriptions for the same drug by 1 prescriber for larger numbers of patients.

(c) Quantities beyond those normally prescribed for the same drug.

(d) Unusual dosages.

(e) Unusual geographic distances between patient, pharmacist, and prescriber.

(2) Except as otherwise provided in this section, a practitioner, in good faith, may dispense a controlled substance included in schedule 2 upon receipt of a prescription of a practitioner licensed under section 7303 on a prescription form. A practitioner shall not issue more than 1 prescription for a controlled substance included in schedule 2 on a single prescription form.

(3) In an emergency situation, as described in R 338.3165 of the Michigan administrative code, a controlled substance included in schedule 2 may be dispensed upon the oral prescription of a practitioner if, the prescribing practitioner promptly fills out a prescription form and forwards the prescription form to the dispensing pharmacy within 7 days after the oral prescription is issued. Except for a terminally ill patient whose terminal illness the pharmacist documents pursuant to rules promulgated by the administrator, a prescription for a controlled substance included in schedule 2 shall not be filled more than 60 days after the date on which the prescription was issued. A prescription for a controlled substance included in schedule 2 for a terminally ill patient whose terminal illness the pharmacist documents pursuant to rules promulgated by the administrator may be partially filled in increments for not more than 60 days after the date on which the prescription was issued.

(4) A practitioner, in good faith, may dispense a controlled substance included in schedule 3, 4, or 5 that is a prescription drug as determined under section 503(b) of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1051, 21 U.S.C. 353, or section 17708, upon receipt of a prescription on a prescription form or an oral prescription of a practitioner. A prescription for a controlled substance included in schedule 3 or 4 shall not be filled or refilled without specific refill instructions noted by the prescriber. A prescription for a controlled substance included in schedule 3 or 4 shall not be filled or refilled later than 6 months after the date of the prescription or be refilled more than 5 times, unless renewed by the prescriber in accordance with rules promulgated by the administrator.

(5) A controlled substance included in schedule 5 shall not be distributed or dispensed other than for a medical purpose, or in any manner except in accordance with rules promulgated by the administrator.

(6) If a prescription is required under this section, the prescription shall contain the quantity of the controlled substance prescribed in both written and numerical terms. A prescription is in compliance with this subsection if, in addition to containing the quantity of the controlled substance prescribed in written terms, it contains preprinted numbers representative of the quantity of the controlled substance prescribed next to which is a box or line the prescriber may check.

(7) A prescribing practitioner shall not use a prescription form for a purpose other than prescribing. A prescribing practitioner shall not postdate a prescription form that contains a prescription for a controlled substance. A prescriber may transmit a prescription by facsimile of a printed prescription form and by electronic transmission of a printed prescription form, if not prohibited by federal law. If, with the patient's consent, a prescription is electronically transmitted, it shall be transmitted directly to a pharmacy of the patient's choice by the prescriber or the prescriber's authorized agent, and the data shall not be altered, modified, or extracted in the transmission process.

(8) Notwithstanding subsections (1) to (5), a dog pound or animal shelter licensed or registered by the department of agriculture pursuant to 1969 PA 287, MCL 287.331 to 287.340, or a class B dealer may acquire a limited permit only for the purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital to practice euthanasia on injured, sick, homeless, or unwanted domestic pets and other animals, if the dog pound or animal shelter or class B dealer does all of the following:

(a) Applies to the administrator for a permit in accordance with rules promulgated under this part. The application shall contain the name of the individual in charge of the day to day operations of the dog pound or animal shelter or class B dealer's facilities and the name of the individual responsible for designating employees who will be practicing euthanasia on animals pursuant to this act.

(b) Complies with the rules promulgated by the administrator for the storage, handling, and use of commercially prepared, premixed solution of sodium pentobarbital to practice euthanasia on animals. A record of use shall be maintained and shall be available for inspection.

(c) Certifies that an employee of the dog pound or animal shelter or class B dealer has received, and can document completion of, a minimum of 8 hours of training given by a licensed veterinarian in the use of sodium pentobarbital to practice euthanasia on animals pursuant to rules promulgated by the administrator, in consultation with the Michigan board of veterinary medicine as these rules relate to this training, and that only an individual described in this subdivision or an individual otherwise permitted to use a controlled substance pursuant to this article will administer the commercially prepared, premixed solution of sodium pentobarbital according to written procedures established by the dog pound or animal shelter or class B dealer.

(9) The application described in subsection (8) shall include the names and addresses of all individuals employed by the dog pound or animal shelter or class B dealer who have been trained as described in subsection (8)(c) and the name of the veterinarian who trained them. The list of names and addresses shall be updated every 6 months.

(10) If a dog pound or animal shelter or class B dealer issued a permit pursuant to subsection (8) does not have in its employ an individual trained as described in subsection (8)(c), the dog pound or animal shelter or class B dealer shall immediately notify the administrator and shall cease to administer any commercially prepared, premixed solution of sodium pentobarbital until the administrator is notified that 1 of the following has occurred:

(a) An individual trained as described in subsection (8)(c) has been hired by the dog pound or animal shelter or class B dealer.

(b) An employee of the dog pound or animal shelter or class B dealer has been trained as described in subsection (8)(c).

(11) A veterinarian, including a veterinarian who trains individuals as described in subsection (8)(c), is not civilly or criminally liable for the use of a commercially prepared, premixed solution of sodium pentobarbital by a dog pound or animal shelter or class B dealer unless the veterinarian is employed by or under contract with the dog pound or animal

shelter or class B dealer and the terms of the veterinarian's employment or the contract require the veterinarian to be responsible for the use or administration of the commercially prepared, premixed solution of sodium pentobarbital.

(12) A person shall not knowingly use or permit the use of a commercially prepared, premixed solution of sodium pentobarbital in violation of this section.

(13) This section does not require that a veterinarian be employed by or under contract with a dog pound or animal shelter or class B dealer to obtain, possess, or administer a commercially prepared, premixed solution of sodium pentobarbital pursuant to this section.

(14) As used in this section, "class B dealer" means a class B dealer licensed by the United States department of agriculture pursuant to the animal welfare act, Public Law 89-544, 7 U.S.C. 2131 to 2147, 2149, and 2151 to 2159 and the department of agriculture pursuant to 1969 PA 224, MCL 287.381 to 287.395.

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 provide an appropriate electronic format for the reporting of data 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 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 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 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 (9).

(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 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 shall report its findings under subsection (7) to the members of the house and senate standing committees having jurisdiction over health policy issues not later than October 1, 2002, and before the electronic monitoring system required under this section becomes operational.

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

(10) 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.

(11) The data and any report containing any patient identifiers obtained therefrom is not a public record, and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(12) As used in this section, "department" means the department of consumer and industry services.

Enacting section 1. Sections 7334 and 17766b of the public health code, 1978 PA 368, MCL 333.7334 and 333.17766b, are repealed effective upon promulgation of the rules required under section 7333a(1) of the public health code, 1978 PA 368, MCL 333.7333a, as added by this amendatory act, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, as added by this amendatory act, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, as added by this amendatory act, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data.

Enacting section 2. Section 7333 of the public health code, 1978 PA 368, MCL 333.7333, as amended by this amendatory act, takes effect upon promulgation of the rules required under section 7333a(1) of the public health code, 1978 PA 368, MCL 333.7333a, as added by this amendatory act, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, as added by this amendatory act, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, as added by this amendatory act, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

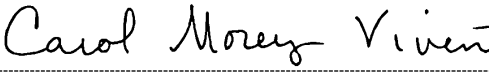
(a) Senate Bill No. 827.

(b) House Bill No. 5261.

(c) House Bill No. 5262.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

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Governor.