

SUBSTITUTE FOR  
SENATE BILL NO. 831

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
(MCL 333.1101 to 333.25211) by adding part 97.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 97.

MICHIGAN PHARMACEUTICAL BEST PRACTICES INITIATIVE

Sec. 9701. As used in this part:

(a) "Committee" means the Michigan pharmacy and therapeutics  
committee established by Executive Order No. 2001-8 and by  
section 9705.

(b) "Controlled substance" means that term as defined in  
section 7104.

(c) "Department" means the department of community health.

(d) "Drug" means that term as defined in section 17703.

(e) "Initiative" means the pharmaceutical best practices

1 initiative established by this part.

2 (f) "Medicaid" means the program of medical assistance  
3 established under title XIX of the social security act, 42 USC  
4 1396 to 1396v.

5 (g) "Pharmacist" means an individual licensed by this state  
6 to engage in the practice of pharmacy under article 15.

7 (h) "Physician" means an individual licensed by this state to  
8 engage in the practice of medicine or osteopathic medicine and  
9 surgery under article 15.

10 (i) "Prescriber" means a licensed dentist, a licensed doctor  
11 of medicine, a licensed doctor of osteopathic medicine and  
12 surgery, a licensed doctor of podiatric medicine and surgery, a  
13 licensed optometrist certified under part 174 to administer and  
14 prescribe therapeutic pharmaceutical agents, or another licensed  
15 health professional acting under the delegation and using,  
16 recording, or otherwise indicating the name of the delegating  
17 licensed doctor of medicine or licensed doctor of osteopathic  
18 medicine and surgery.

19 (j) "Prescription" means that term as defined in section  
20 17708.

21 (k) "Prescription drug" means that term as defined in section  
22 17708.

23 (l) "Type II transfer" means that term as defined in section  
24 3 of the executive organization act of 1965, 1965 PA 380, MCL  
25 16.103.

26 Sec. 9703. (1) The department may implement a  
27 pharmaceutical best practices initiative for the department's

1 various health care programs to control the costs of health care,  
2 to reduce the costs of prescription drugs, and to assure  
3 continued access to pharmaceutical services at fair and  
4 reasonable prices. If implemented, the initiative shall include,  
5 but is not limited to, the establishment and maintenance of each  
6 of the following:

7 (a) A preferred drug list.

8 (b) A prior authorization and appeal process.

9 (2) The prior authorization and appeal process established  
10 under subsection (1) shall include the establishment of a  
11 telephone hotline for prescribers that is accessible 24 hours per  
12 day and staffed to ensure that a response is initiated to each  
13 prior authorization request within 24 hours after its receipt and  
14 to each appeal of a prior authorization denial within 48 hours,  
15 excluding Saturday, Sunday, and legal holidays, after all  
16 necessary documentation for reconsideration is received. Each  
17 appeal for reconsideration of a previous denial for prior  
18 authorization shall be reviewed and decided by a physician.

19 (3) The department, in cooperation with a pharmaceutical  
20 manufacturer or its agent, may establish disease management and  
21 health management programs that shall be provided, as negotiated,  
22 by the pharmaceutical manufacturer or its agent instead of a  
23 supplemental rebate for the inclusion of certain products  
24 manufactured by that pharmaceutical manufacturer on the  
25 department's preferred drug list. If the department negotiates a  
26 plan for the provision of services by the pharmaceutical  
27 manufacturer instead of a supplemental rebate as provided under

1 this subsection, the department shall provide a written report on  
2 the effectiveness of the programs being offered and the savings  
3 incurred as a result of those programs being provided instead of  
4 supplemental rebates to the members of the house and senate  
5 appropriations subcommittees on community health.

6 (4) The department may hire or retain contractors,  
7 subcontractors, advisors, consultants, and agents and may enter  
8 into contracts necessary or incidental to implement this part and  
9 carry out its responsibilities and duties.

10 (5) The department may promulgate rules or medicaid policies  
11 to implement this part and to ensure compliance with the  
12 published medicaid bulletin that initiated this initiative.

13 Sec. 9705. (1) The Michigan pharmacy and therapeutics  
14 committee, established by Executive Order No. 2001-8, is  
15 transferred to the department as a type II transfer. The  
16 committee shall consist of 11 members appointed by the governor  
17 as follows:

18 (a) Six physicians whose practice includes patients who are  
19 eligible for medicaid. The governor shall make this appointment  
20 from a list of physicians recommended by the Michigan state  
21 medical society and the Michigan osteopathic association or their  
22 successor organizations. The list of recommended physicians may  
23 include, but is not limited to, a physician with expertise in  
24 mental health, a physician who specializes in pediatrics, and a  
25 physician with experience in long-term care.

26 (b) Five pharmacists whose business includes prescriptions  
27 from individuals who are eligible for medicaid. The governor

1 shall make this appointment from a list of pharmacists  
2 recommended by the Michigan pharmacists association and the  
3 Michigan retailers association or their successor organizations.  
4 The list of recommended pharmacists may include, but is not  
5 limited to, a pharmacist with expertise in mental health drugs, a  
6 pharmacist who specializes in pediatrics, and a pharmacist with  
7 experience in long-term care.

8       (2) If the governor declines to appoint, with or without  
9 cause, any of the individuals recommended under subsection (1)(a)  
10 or (b), the respective organizations shall, as soon as possible,  
11 provide the governor with a new list of recommendations for his  
12 or her consideration.

13       (3) No member of the committee shall be employed by a  
14 pharmaceutical manufacturer or have any interest directly or  
15 indirectly in the business of a pharmaceutical manufacturer which  
16 shall cause a conflict of interest.

17       (4) Members of the committee shall serve a term of 2 years,  
18 except as otherwise provided for members currently serving on the  
19 committee on the effective date of this section. Members serving  
20 on the committee on the effective date of this section shall  
21 serve until the date on which their appointment would have  
22 expired or until October 1, 2005, whichever occurs first. A  
23 member serving on the committee on the effective date of this  
24 section whose term would have otherwise expired after October 1,  
25 2005 may serve the remainder of his or her term if he or she  
26 meets the qualifications established under this section. The  
27 governor shall appoint an additional number of members to the

1 committee necessary to reach 11 members as required under this  
2 section. The governor shall designate 1 member of the committee  
3 to serve as the chairperson of the committee. This member shall  
4 serve as chairperson at the pleasure of the governor. An  
5 individual appointed to serve as a physician or pharmacist member  
6 of the committee may serve only while maintaining his or her  
7 professional license in good standing. An individual physician's  
8 or pharmacist's failure to maintain his or her professional  
9 license in good standing immediately terminates that individual's  
10 membership on the committee. One example of not maintaining a  
11 professional license in good standing is if the department  
12 imposes a sanction under article 15 on a physician or pharmacist  
13 committee member. A vacancy on the committee shall be filled in  
14 the same manner as the original appointment. An individual  
15 appointed to fill a vacancy created other than by expiration of a  
16 term shall be appointed for the unexpired term of the member whom  
17 he or she is to succeed in the same manner as the original  
18 appointment. A member may be reappointed for additional terms.

19 (5) The committee has the powers, duties, and  
20 responsibilities prescribed in Executive Order No. 2001-8 and  
21 shall operate pursuant to and in accordance with Executive Order  
22 No. 2001-8.

23 (6) Members of the committee shall serve without  
24 compensation, but shall be reimbursed for necessary travel and  
25 other expenses pursuant to the standard travel regulations of the  
26 department of management and budget.

27 (7) The committee may promulgate rules governing the

1 organization, operation, and procedures of the committee. A  
2 majority of the members serving constitute a quorum for the  
3 transaction of business. The committee shall approve a final  
4 action of the committee by a majority vote of the members. A  
5 member of the committee must be present at a meeting of the  
6 committee in order to vote. A member shall not delegate his or  
7 her responsibilities to another individual.

8 (8) The committee shall meet at the call of the chairperson  
9 and as otherwise provided in the rules promulgated by the  
10 committee or the department. The committee may meet at any  
11 location within this state. A meeting of the committee is  
12 subject to the open meetings act, 1976 PA 267, MCL 15.261 to  
13 15.275. The committee shall post a notice of the meeting on the  
14 department's website 14 days before each meeting date. By  
15 January 31 of each year, the committee shall make available the  
16 committee's regular meeting schedule and meeting locations for  
17 that year on the department's website. The committee may make  
18 inquiries, conduct studies and investigations, hold hearings, and  
19 receive comments from the public.

20 Sec. 9707. The committee shall be advisory in nature and  
21 shall assist the department with the following functions pursuant  
22 to applicable state and federal law:

23 (a) Advise and make recommendations to the department for the  
24 inclusion of prescription drugs on the preferred drug list based  
25 on available information regarding the known potential impact on  
26 patient care, the known potential fiscal impact on related  
27 medicaid covered services, and sound clinical evidence found in

1 labeling, drug compendia, and peer-reviewed literature pertaining  
2 to use of the drug in the relevant population.

3 (b) Advise the department on issues affecting prescription  
4 drug coverage for the department's various health care programs.

5 (c) Recommend to the department guidelines for prescription  
6 drug coverage under the department's various health care  
7 programs.

8 (d) Develop a process to collect and review information about  
9 new prescription drugs. The department shall post this process  
10 and the necessary forms on the department's website.

11 (e) Recommend to the department strategies to improve the  
12 initiative.

13 Sec. 9709. (1) Except as otherwise provided by law or in  
14 this part, a prescriber shall obtain prior authorization for  
15 drugs that are not included on the department's preferred drug  
16 list. If the prescriber's prior authorization request is denied,  
17 the department or the department's agent shall inform the  
18 requesting prescriber of his or her option to speak to the  
19 agent's physician on duty regarding his or her request. If  
20 immediate contact with the agent's physician on duty cannot be  
21 arranged, the department or the department's agent shall inform  
22 the requesting prescriber of his or her right to request a  
23 72-hour supply of the nonauthorized drug. If contact with the  
24 agent's physician on duty cannot be arranged within 72 hours due  
25 to a legal holiday, the requesting prescriber may request a  
26 longer supply of the nonauthorized drug.

27 (2) The department or the department's agent shall provide



1 authorization for prescribed drugs that are not on its preferred  
2 drug list if the prescribing physician telephones the  
3 department's agent or certifies in writing on a form as provided  
4 by the department that the drugs are being prescribed consistent  
5 with its licensed indications, that no other drugs included on  
6 the preferred drug list would offer a comparable benefit to the  
7 patient, and that the drugs are necessary for the continued  
8 stabilization of the patient's medical condition as initial  
9 therapy or if the prescribing physician telephones the  
10 department's agent or certifies in writing on a form as provided  
11 by the department that following documented failures on earlier  
12 prescription regimens, in the physician's professional opinion,  
13 no other drug or drugs included on the preferred drug list can  
14 provide a comparable benefit. Documentation of necessity or  
15 failures under this subsection or subsection (3) may be provided  
16 by telephone, facsimile, or electronic transmission.

17 (3) The department or the department's agent shall provide  
18 authorization for a prescribed drug that is not on its preferred  
19 drug list if each of the following is met:

20 (a) The prescribing physician has achieved advanced  
21 specialization training and is certified as a specialist by a  
22 specialty board that is recognized by the American osteopathic  
23 association and the council on graduate medical education or  
24 their successor organizations and provides documentation of his  
25 or her certification.

26 (b) The prescribing physician described in subdivision (a)  
27 telephones the department or certifies in writing each of the

1 following:

2 (i) The prescribed drug is being prescribed consistent with  
3 its licensed indications or with generally accepted medical  
4 practice as documented in a standard medical reference.

5 (ii) The prescribed drug is being used to treat a condition  
6 that is normally treated within the prescribing physician's  
7 specialty field.

8 (iii) No other drug or drugs included on the preferred drug  
9 list can provide a comparable benefit.

10 (4) A patient who is under a court order for a particular  
11 prescription drug before becoming a recipient of medicaid is  
12 exempt from the prior authorization process and may continue on  
13 that medication for the duration of the order.

14 (5) Except as otherwise provided under this subsection, a  
15 patient who is currently under medical treatment and whose  
16 condition has been stabilized under a given prescription regimen  
17 before becoming a recipient of medicaid is exempt from the prior  
18 authorization process and may continue on that medication for the  
19 current course of treatment if without that prescription regimen  
20 the patient would suffer serious health consequences. Unless a  
21 controlled substance is currently being prescribed under a  
22 patient's hospice plan of care, a continuing prescription for a  
23 controlled substance under this subsection requires prior  
24 authorization. The department or the department's agent shall  
25 not deny a request for prior authorization of a controlled  
26 substance under this subsection unless the department or the  
27 department's agent determines that the controlled substance or

1 the dosage of the controlled substance being prescribed is not  
2 consistent with its licensed indications or with generally  
3 accepted medical practice as documented in a standard medical  
4 reference.