

HOUSE BILL No. 4777

April 2, 2009, Introduced by Reps. Rick Jones, Elsenheimer, Marleau and Ball and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7333a (MCL 333.7333a), as added by 2001 PA 231.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7333a. (1) The department shall establish, by rule, an
2 electronic system for monitoring schedule 2, 3, 4, and 5 controlled
3 substances dispensed in this state by veterinarians, and by
4 pharmacists and dispensing prescribers licensed under part 177 or
5 dispensed to an address in this state by a pharmacy licensed in
6 this state. The rules shall provide an appropriate electronic
7 format for the reporting of data including, but not limited to,
8 patient identifiers, the name of the controlled substance

1 dispensed, date of dispensing, quantity dispensed, prescriber, and
2 dispenser. The department shall require a veterinarian, pharmacist,
3 or dispensing prescriber to utilize the electronic data transmittal
4 process developed by the department or the department's contractor.
5 A veterinarian, pharmacist, or dispensing prescriber shall not be
6 required to pay a new fee dedicated to the operation of the
7 electronic monitoring system and shall not incur any additional
8 costs solely related to the transmission of data to the department.
9 The rules promulgated under this subsection shall exempt both of
10 the following circumstances from the reporting requirements:

11 (a) The administration of a controlled substance directly to a
12 patient.

13 (b) The dispensing from a health facility or agency licensed
14 under article 17 of a controlled substance by a dispensing
15 prescriber in a quantity adequate to treat a patient for not more
16 than 48 hours.

17 (2) Notwithstanding any practitioner-patient privilege, the
18 director of the department may provide data obtained under this
19 section to all of the following:

20 (a) A designated representative of a board responsible for the
21 licensure, regulation, or discipline of a practitioner, pharmacist,
22 or other person who is authorized to prescribe, administer, or
23 dispense controlled substances.

24 (b) An employee or agent of the department.

25 (c) A state, federal, or municipal employee or agent whose
26 duty is to enforce the laws of this state or the United States
27 relating to drugs.

1 (d) A state-operated medicaid program.

2 (e) A state, federal, or municipal employee who is the holder
3 of a search warrant or subpoena properly issued for the records.

4 (f) A practitioner or pharmacist who requests information and
5 certifies that the requested information is for the purpose of
6 providing medical or pharmaceutical treatment to a bona fide
7 current patient.

8 (g) An individual with whom the department has contracted
9 under subsection (9).

10 (3) Except as otherwise provided in this part, information
11 submitted under this section shall be used only for bona fide drug-
12 related criminal investigatory or evidentiary purposes or for the
13 investigatory or evidentiary purposes in connection with the
14 functions of a disciplinary subcommittee or 1 or more of the
15 licensing or registration boards created in article 15.

16 (4) A person who receives data or any report under subsection
17 (2) **OR (8)** containing any patient identifiers of the system from
18 the department shall not provide it to any other person or entity
19 except by order of a court of competent jurisdiction.

20 (5) Except as otherwise provided in this subsection, reporting
21 under subsection (1) is mandatory for a veterinarian, pharmacist,
22 and dispensing prescriber. However, the department may issue a
23 written waiver of the electronic reporting requirement to a
24 veterinarian, pharmacist, or dispensing prescriber who establishes
25 grounds that he or she is unable to use the electronic monitoring
26 system. The department shall require the applicant for the waiver
27 to report the required information in a manner approved by the

1 department.

2 (6) In addition to the information required to be reported
3 annually under section 7112(3), the controlled substances advisory
4 commission shall include in the report information on the
5 implementation and effectiveness of the electronic monitoring
6 system.

7 (7) The department, in consultation with the controlled
8 substances advisory commission, the Michigan board of pharmacy, the
9 Michigan board of medicine, the Michigan board of osteopathic
10 medicine and surgery, the Michigan state police, and appropriate
11 medical professional associations, shall examine the need for and
12 may promulgate rules for the production of a prescription form on
13 paper that minimizes the potential for forgery. The rules shall not
14 include any requirement that sequential numbers, bar codes, or
15 symbols be affixed, printed, or written on a prescription form or
16 that the prescription form be a state produced prescription form.
17 In examining the need for rules for the production of a
18 prescription form on paper that minimizes the potential for
19 forgery, the department shall consider and identify the following:

20 (a) Cost, benefits, and barriers.

21 (b) Overall cost-benefit analysis.

22 (c) Compatibility with the electronic monitoring system
23 required under this section.

24 ~~— (8) The department shall report its findings under subsection~~
25 ~~(7) to the members of the house and senate standing committees~~
26 ~~having jurisdiction over health policy issues not later than~~
27 ~~October 1, 2002, and before the electronic monitoring system~~

1 ~~required under this section becomes operational.~~

2 (8) ON OR BEFORE JANUARY 1, 2010 AND NOTWITHSTANDING ANY
3 PRACTITIONER-PATIENT PRIVILEGE, THE DIRECTOR OF THE DEPARTMENT
4 SHALL PROVIDE DIRECT ACCESS TO THE ELECTRONIC MONITORING SYSTEM
5 ESTABLISHED UNDER SUBSECTION (1) TO LAW ENFORCEMENT AGENCIES IN
6 THIS STATE. AS USED IN THIS SUBSECTION, "LAW ENFORCEMENT AGENCIES"
7 MEANS ALL LAW ENFORCEMENT AGENCIES AUTHORIZED AND ESTABLISHED
8 PURSUANT TO LAW, INCLUDING COMMON LAW, THAT ARE RESPONSIBLE FOR THE
9 PREVENTION AND DETECTION OF CRIME AND THE ENFORCEMENT OF THE
10 GENERAL CRIMINAL LAWS OF THIS STATE.

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

13 (10) The department, all law enforcement officers, all
14 officers of the court, and all regulatory agencies and officers, in
15 using the data for investigative or prosecution purposes, shall
16 consider the nature of the prescriber's and dispenser's practice
17 and the condition for which the patient is being treated.

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

22 (12) As used in this section, "department" means the
23 department of ~~consumer and industry services~~ **COMMUNITY HEALTH**.