

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4369

(As amended February 15, 2012)

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7333a (MCL 333.7333a), as amended by 2011 PA
108.

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
9 dispensed, date of dispensing, quantity dispensed, prescriber, and

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

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

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

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

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

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

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

27 (d) A state-operated medicaid program.

House Bill No. 4369 (S-2) as amended November 3, 2011
as amended February 15, 2012

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

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

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

9 (h) A practitioner or other person who is authorized to
10 prescribe controlled substances for the purpose of determining if
11 prescriptions written by that practitioner or other person have
12 been dispensed.

13 (I) [**<<UNTIL DECEMBER 31, 2016,>>**] **THE HEALTH CARE PAYMENT OR**
14 **BENEFIT PROVIDER FOR THE PURPOSES OF ENSURING PATIENT SAFETY AND**
15 **INVESTIGATING FRAUD AND ABUSE.**

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

22 (4) A person who receives data or any report under subsection
23 (2) containing any patient identifiers of the system from the
24 department shall not provide it to any other person or entity
25 except by order of a court of competent jurisdiction.

26 (5) Except as otherwise provided in this subsection, reporting
27 under subsection (1) is mandatory for a veterinarian, pharmacist,

1 and dispensing prescriber. However, the department may issue a
2 written waiver of the electronic reporting requirement to a
3 veterinarian, pharmacist, or dispensing prescriber who establishes
4 grounds that he or she is unable to use the electronic monitoring
5 system. The department shall require the applicant for the waiver
6 to report the required information in a manner approved by the
7 department.

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

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

- 26 (a) Cost, benefits, and barriers.
27 (b) Overall cost-benefit analysis.

House Bill No. 4369 (S-2) as amended November 3, 2011

(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 ~~therefrom is~~ **FROM THE DATA ARE** not a public ~~record,~~ **RECORDS** and ~~is~~ **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 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 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) ~~(11)~~ As used in this section: ~~,"department"~~

1 (A) "DEPARTMENT" means the department of ~~community health~~
2 LICENSING AND REGULATORY AFFAIRS.

3 (B) "HEALTH CARE PAYMENT OR BENEFIT PROVIDER" MEANS A PERSON
4 THAT PROVIDES HEALTH BENEFITS, COVERAGE, OR INSURANCE IN THIS
5 STATE, INCLUDING A HEALTH INSURANCE COMPANY, A NONPROFIT HEALTH
6 CARE CORPORATION, A HEALTH MAINTENANCE ORGANIZATION, A MULTIPLE
7 EMPLOYER WELFARE ARRANGEMENT, A MEDICAID CONTRACTED HEALTH PLAN, OR
8 ANY OTHER PERSON PROVIDING A PLAN OF HEALTH BENEFITS, COVERAGE, OR
9 INSURANCE SUBJECT TO STATE INSURANCE REGULATION.