

SENATE BILL No. 735

October 6, 2011, Introduced by Senators WHITMER, WARREN and YOUNG and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 17744.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 17744. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
2 A PHARMACY SHALL DELIVER LAWFULLY PRESCRIBED DRUGS OR DEVICES TO
3 PATIENTS AND SHALL DISTRIBUTE DRUGS AND DEVICES APPROVED BY THE
4 UNITED STATES FOOD AND DRUG ADMINISTRATION FOR RESTRICTED
5 DISTRIBUTION BY PHARMACIES, OR PROVIDE A THERAPEUTICALLY EQUIVALENT
6 DRUG OR DEVICE IN A TIMELY MANNER CONSISTENT WITH REASONABLE
7 EXPECTATIONS FOR FILLING THE PRESCRIPTION. SUBJECT TO SUBSECTION
8 (3), A PHARMACY IS NOT REQUIRED TO COMPLY WITH THIS SUBSECTION IN
9 ANY OF THE FOLLOWING OR SUBSTANTIALLY SIMILAR CIRCUMSTANCES:

1 (A) THE PRESCRIPTION CONTAINS AN OBVIOUS OR KNOWN ERROR,
2 INADEQUACY IN THE INSTRUCTIONS, OR KNOWN CONTRAINDICATIONS OR IS AN
3 INCOMPATIBLE PRESCRIPTION.

4 (B) A NATIONAL OR STATE EMERGENCY EXISTS OR GUIDELINES HAVE
5 BEEN ISSUED AFFECTING AVAILABILITY, USAGE, OR SUPPLIES OF DRUGS OR
6 DEVICES.

7 (C) THE PHARMACY LACKS SPECIALIZED EQUIPMENT OR EXPERTISE
8 NEEDED TO SAFELY PRODUCE, STORE, OR DISPENSE DRUGS OR DEVICES, SUCH
9 AS CERTAIN DRUG COMPOUNDING OR STORAGE FOR NUCLEAR MEDICINE.

10 (D) THE PRESCRIPTION IS POTENTIALLY FRAUDULENT.

11 (E) DESPITE GOOD-FAITH COMPLIANCE, THE DRUG OR DEVICE IS
12 UNAVAILABLE.

13 (2) NOTHING IN THIS SECTION REQUIRES PHARMACIES TO DELIVER A
14 DRUG OR DEVICE WITHOUT PAYMENT OF THEIR USUAL AND CUSTOMARY OR
15 CONTRACTED CHARGE.

16 (3) IF, DESPITE GOOD-FAITH COMPLIANCE, THE LAWFULLY PRESCRIBED
17 DRUG OR DEVICE IS NOT IN STOCK OR THE PRESCRIPTION CANNOT BE FILLED
18 UNDER SUBSECTION (1) (A), THE PHARMACY SHALL PROVIDE THE PATIENT OR
19 HIS OR HER AGENT A TIMELY ALTERNATIVE FOR APPROPRIATE THERAPY THAT,
20 CONSISTENT WITH CUSTOMARY PHARMACY PRACTICE, MAY INCLUDE OBTAINING
21 THE DRUG OR DEVICE. ALTERNATIVES THAT A PHARMACY MAY USE UNDER THIS
22 SUBSECTION INCLUDE, BUT ARE NOT LIMITED TO, ANY OF THE FOLLOWING:

23 (A) CONTACTING THE PRESCRIBER TO ADDRESS CONCERNS SUCH AS
24 THOSE IDENTIFIED IN SUBSECTION (1) (A) OR TO OBTAIN AUTHORIZATION TO
25 PROVIDE A THERAPEUTICALLY EQUIVALENT PRODUCT.

26 (B) IF REQUESTED BY THE PATIENT OR HIS OR HER AGENT, RETURNING
27 UNFILLED LAWFUL PRESCRIPTIONS TO THE PATIENT OR AGENT.

1 (C) IF REQUESTED BY THE PATIENT OR HIS OR HER AGENT,
2 COMMUNICATING OR TRANSMITTING, AS PERMITTED BY LAW, THE ORIGINAL
3 PRESCRIPTION INFORMATION TO A PHARMACY OF THE PATIENT'S CHOICE THAT
4 IS ABLE TO FILL THE PRESCRIPTION IN A TIMELY MANNER.

5 (D) OFFERING TO LOCATE A PHARMACY THAT IS REASONABLY
6 ACCESSIBLE TO THE PATIENT OR AGENT AND THAT HAS THE DRUG OR DEVICE
7 IN STOCK.

8 (4) A PHARMACY THAT ENGAGES IN OR PERMITS ANY OF THE FOLLOWING
9 VIOLATES THIS SECTION AND IS SUBJECT TO DISCIPLINE OR OTHER
10 ENFORCEMENT ACTIONS UNDER THIS ACT:

11 (A) DESTRUCTION OF UNFILLED LAWFUL PRESCRIPTIONS.

12 (B) REFUSAL TO RETURN UNFILLED LAWFUL PRESCRIPTIONS.

13 (C) VIOLATION OF A PATIENT'S PRIVACY.

14 (D) DISCRIMINATION AGAINST PATIENTS OR THEIR AGENTS IN A
15 MANNER PROHIBITED BY STATE OR FEDERAL LAWS.

16 (E) FAILURE ON A PERSISTENT BASIS TO HAVE PREGNANCY PREVENTION
17 DRUGS OR DEVICES APPROVED BY THE UNITED STATES FOOD AND DRUG
18 ADMINISTRATION AVAILABLE FOR DELIVERY.

19 (5) A PERSON WHO BELIEVES THAT A VIOLATION OF THIS SECTION HAS
20 OCCURRED MAY REPORT THE VIOLATION TO THE DEPARTMENT. THE DEPARTMENT
21 SHALL INVESTIGATE EACH COMPLAINT RECEIVED AND SHALL NOTIFY THE
22 COMPLAINANT IN WRITING OF THE RESULTS OF A REVIEW OR INVESTIGATION
23 OF THE COMPLAINT AND ANY ACTION PROPOSED TO BE TAKEN.