Act No. 311
Public Acts of 2020
Approved by the Governor
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STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020

Introduced by Senator Lucido

ENROLLED SENATE BILL No. 417

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 provide for the levy of taxes against certain health facilities or agencies; 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 provide for an appropriation and supplements; 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 sections 5145, 17744a, and 17744d (MCL 333.5145, 333.17744a, and 333.17744d), section 5145 as added by 2020 PA 231, section 17744a as amended by 2015 PA 221, and section 17744d as added by 2015 PA 221.

The People of the State of Michigan enact:

Sec. 5145. (1) The department, in consultation with the department of licensing and regulatory affairs, shall do all of the following:

(a) By November 15, 2020, develop and submit a report to the house and senate standing committees on health policy that is based on relevant guidance issued by the federal Centers for Disease Control and Prevention and incorporates recommendations from the Michigan nursing homes COVID-19 preparedness task force. The report must include, but is not limited to, a description of any updates to the final recommendations of the Michigan nursing homes COVID-19 preparedness task force in its report dated August 30, 2020, the status on implementing the recommendations, and a description of any barriers to implementing the recommendations. The department may use health care systems and hospital capacity data when preparing the report. The report must also address each of the following quality-of-life recommendations from the task force report described in this subdivision:

(i) Outdoor visits.

(ii) Small-group noncontact activities.

(iii) Communal dining for residents.

(iv) Indoor visitation participation opt-in.

(v) Resident small-group "pod" opt-in.

(vi) Increased virtual visitation opportunities.

(vii) Staff access to creative engagement ideas.

(viii) Support for meaningful engagement activities.

(ix) Ancillary service providers.

(x) Visitation volunteers.

(xi) Off-campus health and wellness visits.

(xii) Window visits.

(b) By November 15, 2020, implement a statewide policy for nursing homes on providing in-person indoor and outdoor visitations to all nursing home residents. The department shall post a copy of the policy on the department's publicly available website and post any updates to the policy within 48 hours after making the updates. The department shall also provide a copy of the policy to the house and senate standing committees on health policy. The policy may limit in-person indoor and outdoor visitations for a nursing home resident who tests positive for coronavirus, if a nursing home is experiencing an outbreak of coronavirus, or if a community is experiencing an outbreak of coronavirus.

(c) By November 15, 2020, develop and submit a report to the house and senate standing committees on health policy on the department's plans to identify laboratories that will process and prioritize coronavirus diagnostic tests from nursing homes. The report must include the department's plans for issuing requests for proposals that include a provision requiring a successful bidder to be able to process a high volume of tests, including, but not limited to, rapid testing for coronavirus and provide expedited results.

(d) By November 15, 2020, implement a process for the creation of care and recovery centers within nursing homes for the purpose of providing care to individuals who have tested positive for coronavirus who have not met the criteria for the discontinuation of transmission-based precautions from the federal Centers for Disease Control and Prevention. The department shall require a nursing home seeking to operate a care and recovery center to apply to the department on a form provided by the department and meet all of the following requirements:

(i) Demonstrate each of the following to the department:

(A) That the nursing home has at least an overall rating of 3 stars or a 3-star rating in the staffing category, based on the Five-Star Quality Rating System established by the federal Centers for Medicare and Medicaid Services.

(B) That the nursing home is not operating under a denial of payment for new admissions under 42 CFR 488.417.

(C) That the nursing home is not designated on the Nursing Home Compare website of the federal Centers for Medicare and Medicaid Services as a "red hand facility", indicating a citation for abuse.

(D) That the nursing home meets physical plant capacity to designate a distinct area within the nursing home for individuals who have tested positive for coronavirus.

(E) That the nursing home has dedicated staff for the sole purpose of treating individuals in the care and recovery center.

(ii) Agrees to comply with any facility requirements that the department considers appropriate to prevent the spread of coronavirus in nursing homes, including, but not limited to, infection control safeguards, personal protective equipment, testing for coronavirus, and operational capacity.

(iii) Agrees to comply with all of the following if an individual tests positive for coronavirus and needs to be transferred to a care and recovery center or other location described in this section:

(A) Provide a notice to the individual; if applicable, the individual's legal representative; and, if the individual consents, the individual's emergency contact.

(B) That a physician, a nurse practitioner, or a physician's assistant shall provide, in writing and in a time frame and manner determined by the department, that the individual is medically stable for the transfer.

(iv) Any other requirement established by the department in consultation with the department of licensing and regulatory affairs.

(e) By November 15, 2020, implement a process for the approval of designated areas within nursing homes for individuals who test positive for coronavirus. The department shall require a nursing home seeking to establish a designated area within its facility to apply to the department on a form provided by the department and meet all of the following requirements:

(i) Demonstrate each of the following to the department:

(A) That the nursing home has a program for retaining and providing the appropriate level of care necessary for individuals who test positive for coronavirus and that the program has an adequate supply of personal

protective equipment and adequate testing capabilities, dedicated staffing, and operational capacity at the time of an individual's diagnosis.

(B) That the nursing home's designated area meets proper infection control safeguards.

(C) That there is no longer capacity at a care and recovery center and additional facilities are needed for individuals who test positive for coronavirus, unless the department determines that there are rare and unique circumstances that must be taken to protect the health and safety of an individual.

(ii) Agrees to continually evaluate and ensure its ability to meet each requirement for the approval of a designated area under this subdivision.

(iii) Any other requirement established by the department in consultation with the department of licensing and regulatory affairs.

(2) As used in this section, "coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Sec. 17744a. (1) Notwithstanding any provision of this act to the contrary, a prescriber may issue a prescription for and a dispensing prescriber or pharmacist may dispense auto-injectable epinephrine to an authorized entity. When issuing a prescription for or dispensing auto-injectable epinephrine to an authorized entity as authorized under this section, the prescriber, dispensing prescriber, or pharmacist, as appropriate, shall insert the name of the authorized entity as the name of the patient.

(2) A school employee who is a licensed registered professional nurse or who is trained in the administration of an epinephrine auto-injector under section 1179a of the revised school code, 1976 PA 451, MCL 380.1179a, may possess and administer an epinephrine auto-injector dispensed to a school board under this section.

(3) An authorized entity as defined in subsection (6)(b) may acquire and stock a supply of auto-injectable epinephrine under a prescription as authorized in this section. An authorized entity as defined in subsection (6)(b) that acquires and stocks a supply of auto-injectable epinephrine is subject to section 17744d.

(4) A law enforcement officer or firefighter of an authorized entity as defined in subsection (6)(c) may, subject to section 2 of the law enforcement and firefighter access to epinephrine act, possess and administer auto-injectable epinephrine dispensed to the entity under this section.

(5) A prescriber who issues a prescription for or a dispensing prescriber or pharmacist who dispenses auto-injectable epinephrine to an authorized entity as authorized under this section is not liable in a civil action for a properly stored and dispensed epinephrine auto-injector that was a proximate cause of injury or death to an individual due to the administration of or failure to administer the epinephrine auto-injector.

(6) As used in this section, "authorized entity" means any of the following:

(a) A school board for the purpose of meeting the requirements of section 1179a of the revised school code, 1976 PA 451, MCL 380.1179a.

(b) A person or governmental entity that operates or conducts a business or activity at which allergens capable of causing anaphylaxis may be present, including, but not limited to, a recreation camp, youth sports league, amusement park, nonpublic school, religious institution, or sports arena.

(c) An eligible entity authorized to purchase, possess, and distribute auto-injectable epinephrine under the law enforcement and firefighter access to epinephrine act.

Sec. 17744d. (1) This section only applies to an authorized entity as defined in section 17744a(6)(b) that acquires and stocks a supply of auto-injectable epinephrine as authorized in section 17744a. An authorized entity shall store auto-injectable epinephrine in a location readily accessible in an emergency and in accordance with the auto-injectable epinephrine's instructions for use and any additional requirements that are established by the department. An authorized entity shall designate an employee or agent who has completed the training required under this section to be responsible for the storage, maintenance, and general oversight of the auto-injectable epinephrine acquired by the authorized entity.

(2) An employee or agent of an authorized entity or other individual, which employee, agent, or individual has completed the training required under this section, may, on the premises of or in connection with the conduct of the business or activity of the authorized entity, use auto-injectable epinephrine prescribed under section 17744a to do any of the following:

(a) Provide auto-injectable epinephrine to an individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis for immediate self-administration, regardless of whether the individual has a prescription for auto-injectable epinephrine or has previously been diagnosed with an allergy.

(b) Administer auto-injectable epinephrine to an individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a prescription for auto-injectable epinephrine or has previously been diagnosed with an allergy.

(3) Before providing or administering auto-injectable epinephrine made available by an authorized entity, an employee, agent, or other individual described in subsection (2) must complete an initial anaphylaxis training program and a subsequent anaphylaxis training program at least every 2 years following completion of the most recently completed anaphylaxis training program that meets all of the following requirements:

(a) Is conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or by a person, entity, or class of individuals approved by the department.

(b) Is conducted online or in person.

(c) At a minimum, covers all of the following:

(i) Techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis.

(ii) Standards and procedures for the storage and administration of auto-injectable epinephrine.

(iii) Emergency follow-up procedures.

(4) An organization, person, entity, or class of individuals that conducts an anaphylaxis training program described in subsection (3) shall issue a certificate, on a form developed or approved by the department, to each individual who successfully completes the anaphylaxis training program.

(5) Except as otherwise provided in this section, an authorized entity and its employees, agents, and other trained individuals that have acted in accordance with the requirements of subsections (1) to (4); an individual who uses auto-injectable epinephrine obtained in accordance with the requirements of subsections (1) to (4) and made available under subsection (10); or an organization, person, entity, or class of individuals that conducts an anaphylaxis training program described in and conducted in accordance with subsection (3), is not subject to any of the following:

(a) For an authorized entity or person other than an individual described in this subsection, civil liability for injury, death, or damages that result from the administration or self-administration of auto-injectable epinephrine, the failure to administer auto-injectable epinephrine, or any other act or omission taken pursuant to this section, if the conduct does not constitute gross negligence as that term is defined in section 7 of 1964 PA 170, MCL 691.1407, that is the proximate cause of the injury, death, or damages.

(b) For an individual described in this subsection, civil liability for injury, death, or damages that result from the administration or self-administration of auto-injectable epinephrine, the failure to administer auto-injectable epinephrine, or any other act or omission taken pursuant to this section, if the conduct does not constitute willful or wanton misconduct that is the proximate cause of the injury, death, or damages.

(c) For an authorized entity or person including an individual described in this subsection, criminal prosecution for purchasing, possessing, or distributing auto-injectable epinephrine, the administration or self-administration of auto-injectable epinephrine, the failure to administer auto-injectable epinephrine, or any other act or omission taken pursuant to this section.

(6) The administration of auto-injectable epinephrine as authorized in this section is not the practice of medicine.

(7) This section does not eliminate, limit, or reduce any other immunity or defense that may be available under the laws of this state.

(8) An authorized entity located in this state is not civilly liable for any injuries or related damages that result from providing or administering auto-injectable epinephrine by its employees or agents outside of this state if either of the following requirements is met:

(a) The authorized entity or its employee or agent would not have been civilly liable for the injuries or related damages had the provision or administration occurred in this state.

(b) The authorized entity or its employee or agent is not civilly liable for the injuries or related damages under the law of the state in which the provision or administration occurred.

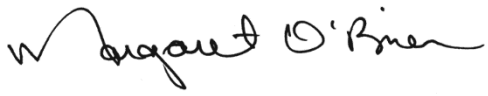
(9) An authorized entity shall submit to the department, on a form prescribed by the department, a report of each incident on the premises of or in connection with the conduct of the business or activity of the authorized entity that involves the administration of auto-injectable epinephrine. The department shall annually publish a report that summarizes and analyzes all reports submitted to it under this subsection.

(10) An authorized entity may make auto-injectable epinephrine available to an individual other than an employee, agent, or individual described in subsection (2), and the other individual may administer auto-injectable epinephrine to any individual he or she believes in good faith to be experiencing anaphylaxis, if the auto-injectable epinephrine is stored in a locked, secure container and is made available only upon remote

authorization by an authorized health care provider after consultation with the authorized health care provider by audio, televideo, or other similar means of electronic communication. Consultation with an authorized health care provider for the purpose of this subsection is not the practice of telemedicine and does not violate any law or rule regulating the authorized health care provider's scope of practice. As used in this subsection, "authorized health care provider" means a prescriber as that term is defined in section 17708 other than a licensed dentist, licensed optometrist, or licensed veterinarian.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 418 of the 100th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate

Clerk of the House of Representatives

Approved_____

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Governor

Compiler's note: Senate Bill No. 418, referred to in enacting section 1, was filed with the Secretary of State December 29, 2020, and became 2020 PA 312, Imd. Eff. Dec. 29, 2020.