

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 417

A bill to amend 1978 PA 368, entitled
"Public health code,"
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:

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

4 (a) By November 15, 2020, develop and submit a report to the
5 house and senate standing committees on health policy that is based
6 on relevant guidance issued by the federal Centers for Disease

1 Control and Prevention and incorporates recommendations from the
2 Michigan nursing homes COVID-19 preparedness task force. The report
3 must include, but is not limited to, a description of any updates
4 to the final recommendations of the Michigan nursing homes COVID-19
5 preparedness task force in its report dated August 30, 2020, the
6 status on implementing the recommendations, and a description of
7 any barriers to implementing the recommendations. The department
8 may use health care systems and hospital capacity data when
9 preparing the report. The report must also address each of the
10 following quality-of-life recommendations from the task force
11 report described in this subdivision:

- 12 (i) Outdoor visits.
- 13 (ii) Small-group noncontact activities.
- 14 (iii) Communal dining for residents.
- 15 (iv) Indoor visitation participation opt-in.
- 16 (v) Resident small-group "pod" opt-in.
- 17 (vi) Increased virtual visitation opportunities.
- 18 (vii) Staff access to creative engagement ideas.
- 19 (viii) Support for meaningful engagement activities.
- 20 (ix) Ancillary service providers.
- 21 (x) Visitation volunteers.
- 22 (xi) Off-campus health and wellness visits.
- 23 (xii) Window visits.

24 (b) By November 15, 2020, implement a statewide policy for
25 nursing homes on providing in-person indoor and outdoor visitations
26 to all nursing home residents. The department shall post a copy of
27 the policy on the department's publicly available website and post
28 any updates to the policy within 48 hours after making the updates.

1 The department shall also provide a copy of the policy to the house
2 and senate standing committees on health policy. The policy may
3 limit in-person indoor and outdoor visitations for a nursing home
4 resident who tests positive for coronavirus, if a nursing home is
5 experiencing an outbreak of coronavirus, or if a community is
6 experiencing an outbreak of coronavirus.

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

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

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

26 (A) That the nursing home has at least ~~a~~**an overall rating of**
27 **3 stars or a 3-star rating in the staffing category**, based on the
28 Five-Star Quality Rating System established by the federal Centers
29 for Medicare and Medicaid Services.

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

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

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

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

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

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

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

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

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

1 affairs.

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

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

9 (A) That the nursing home has a program for retaining and
10 providing the appropriate level of care necessary for individuals
11 who test positive for coronavirus and that the program has an
12 adequate supply of personal protective equipment and adequate
13 testing capabilities, dedicated staffing, and operational capacity
14 at the time of an individual's diagnosis.

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

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

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

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

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

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

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

15 (3) An authorized entity ~~that is not a school board as defined~~
 16 **in subsection (6) (b)** may acquire and stock a supply of auto-
 17 injectable epinephrine under a prescription as authorized in this
 18 section. An authorized entity ~~described as defined in this~~
 19 subsection **(6) (b)** that acquires and stocks a supply of auto-
 20 injectable epinephrine is subject to section 17744d.

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

26 (5) ~~(4)~~—A prescriber who issues a prescription for or a
 27 dispensing prescriber or pharmacist who dispenses auto-injectable
 28 epinephrine to an authorized entity as authorized under this
 29 section is not liable in a civil action for a properly stored and

1 dispensed epinephrine auto-injector that was a proximate cause of
2 injury or death to an individual due to the administration of or
3 failure to administer the epinephrine auto-injector.

4 **(6)** ~~(5)~~—As used in this section, "authorized entity" means any
5 of the following:

6 (a) A school board for the purpose of meeting the requirements
7 of section 1179a of the revised school code, 1976 PA 451, MCL
8 380.1179a.

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

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

17 Sec. 17744d. (1) This section only applies to an authorized
18 entity as defined in section ~~17744a(5)(b)~~ **17744a(6)(b)** that
19 acquires and stocks a supply of auto-injectable epinephrine as
20 authorized in section 17744a. An authorized entity shall store
21 auto-injectable epinephrine in a location readily accessible in an
22 emergency and in accordance with the auto-injectable epinephrine's
23 instructions for use and any additional requirements that are
24 established by the department. An authorized entity shall designate
25 an employee or agent who has completed the training required under
26 this section to be responsible for the storage, maintenance, and
27 general oversight of the auto-injectable epinephrine acquired by
28 the authorized entity.

29 (2) An employee or agent of an authorized entity or other

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

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

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

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

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

28 (b) Is conducted online or in person.

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

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

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

5 (iii) Emergency follow-up procedures.

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

11 (5) Except as otherwise provided in this ~~subsection, section,~~
12 an authorized entity and its employees, agents, and other trained
13 individuals that have acted in accordance with the requirements of
14 subsections (1) to (4); an individual who uses auto-injectable
15 epinephrine obtained in accordance with the requirements of
16 subsections (1) to (4) and made available under subsection ~~(7);~~
17 **(10)**; or an organization, person, entity, or class of individuals
18 that conducts an anaphylaxis training program described in and
19 conducted in accordance with subsection (3), is not ~~liable~~ **subject**
20 **to any of the following:**

21 **(a) For an authorized entity or person other than an**
22 **individual described in this subsection, civil liability** for ~~any~~
23 ~~injuries~~ **injury, death,** or ~~related~~ damages that result from the
24 administration or self-administration of auto-injectable
25 epinephrine, the failure to administer auto-injectable epinephrine,
26 or any other act or omission taken pursuant to this section, ~~. This~~
27 ~~subsection does not apply to acts or omissions that~~ **if the conduct**
28 **does not** constitute ~~willful misconduct or wanton misconduct.~~ **gross**
29 **negligence as that term is defined in section 7 of 1964 PA 170, MCL**

1 691.1407, that is the proximate cause of the injury, death, or
2 damages.

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

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

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

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

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

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

29 (b) The authorized entity or its employee or agent is not

1 **civilly** liable for the injuries or related damages under the law of
2 the state in which the provision or administration occurred.

3 (9) ~~(6)~~—An authorized entity shall submit to the department,
4 on a form prescribed by the department, a report of each incident
5 on the premises of or in connection with the conduct of the
6 business or activity of the authorized entity that involves the
7 administration of auto-injectable epinephrine. The department shall
8 annually publish a report that summarizes and analyzes all reports
9 submitted to it under this subsection.

10 (10) ~~(7)~~—An authorized entity may make auto-injectable
11 epinephrine available to an individual other than an employee,
12 agent, or individual described in subsection (2), and the other
13 individual may administer auto-injectable epinephrine to any
14 individual he or she believes in good faith to be experiencing
15 anaphylaxis, if the auto-injectable epinephrine is stored in a
16 locked, secure container and is made available only upon remote
17 authorization by an authorized health care provider after
18 consultation with the authorized health care provider by audio,
19 televideo, or other similar means of electronic communication.
20 Consultation with an authorized health care provider for the
21 purpose of this subsection is not the practice of telemedicine and
22 does not violate any law or rule regulating the authorized health
23 care provider's scope of practice. As used in this subsection,
24 "authorized health care provider" means a prescriber as that term
25 is defined in section 17708 other than a licensed dentist, licensed
26 optometrist, or licensed veterinarian.

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