

SENATE BILL No. 182

January 29, 2009, Introduced by Senators OLSHOVE, ANDERSON, BIRKHOLZ,
BRATER, JACOBS and CHERRY 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 17775.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 17775. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED
2 AS THE "UTILIZATION OF UNUSED PRESCRIPTION DRUG LAW".

3 (2) THE BOARD SHALL ESTABLISH, IMPLEMENT, AND ADMINISTER A
4 STATEWIDE UNUSED PRESCRIPTION DRUG REPOSITORY PROGRAM CONSISTENT
5 WITH PUBLIC HEALTH AND SAFETY THROUGH WHICH UNUSED PRESCRIPTION
6 DRUGS, OTHER THAN CONTROLLED SUBSTANCES, MAY BE TRANSFERRED FROM A
7 HEALTH FACILITY OR AGENCY, AN ADULT FOSTER CARE FACILITY, AN
8 ASSISTED LIVING FACILITY, OR A MANUFACTURER TO A PHARMACY OR A
9 CHARITABLE CLINIC THAT ELECTS TO PARTICIPATE IN THE PROGRAM. THE
10 PROGRAM IS CREATED TO DISTRIBUTE UNUSED PRESCRIPTION DRUGS, OTHER

1 THAN CONTROLLED SUBSTANCES, TO THE MEDICALLY INDIGENT.

2 (3) SUBJECT TO SUBSECTION (11), THE BOARD SHALL PROMULGATE
3 RULES AND ESTABLISH PROCEDURES NECESSARY TO ESTABLISH, IMPLEMENT,
4 AND ADMINISTER THE PROGRAM. THE BOARD SHALL PROVIDE TECHNICAL
5 ASSISTANCE TO HEALTH FACILITIES AND AGENCIES, ADULT FOSTER CARE
6 FACILITIES, ASSISTED LIVING FACILITIES, MANUFACTURERS, PHARMACIES,
7 AND CHARITABLE CLINICS THAT ELECT TO PARTICIPATE IN THE PROGRAM.

8 (4) PARTICIPATION IN THE PROGRAM BY A HEALTH FACILITY OR
9 AGENCY, ADULT FOSTER CARE FACILITY, ASSISTED LIVING FACILITY,
10 MANUFACTURER, PHARMACY, OR CHARITABLE CLINIC IS VOLUNTARY. NOTHING
11 IN THIS SECTION REQUIRES ANY HEALTH FACILITY OR AGENCY, ADULT
12 FOSTER CARE FACILITY, ASSISTED LIVING FACILITY, MANUFACTURER,
13 PHARMACY, OR CHARITABLE CLINIC TO PARTICIPATE IN THE PROGRAM.

14 (5) PHARMACIES, HEALTH PROFESSIONALS, AND CHARITABLE CLINICS
15 SHALL USE THE FOLLOWING CRITERIA IN ACCEPTING AND DISPENSING UNUSED
16 PRESCRIPTION DRUGS FOR USE IN THE PROGRAM:

17 (A) ONLY PRESCRIPTION DRUGS IN THEIR ORIGINAL SEALED UNIT DOSE
18 PACKAGING OR UNUSED INJECTABLES SHALL BE ACCEPTED AND DISPENSED
19 UNDER THE PROGRAM.

20 (B) THE PACKAGING SHALL BE UNOPENED.

21 (C) EXPIRED PRESCRIPTION DRUGS SHALL NOT BE ACCEPTED.

22 (D) A PRESCRIPTION DRUG SHALL NOT BE ACCEPTED OR DISPENSED IF
23 THE PERSON ACCEPTING OR DISPENSING THE DRUG HAS REASON TO BELIEVE
24 THAT THE DRUG IS ADULTERATED.

25 (E) CONTROLLED SUBSTANCES SHALL NOT BE ACCEPTED.

26 (F) SUBJECT TO THE LIMITATIONS PRESCRIBED IN THIS SUBSECTION,
27 UNUSED PRESCRIPTION DRUGS DISPENSED FOR PURPOSES OF A MEDICAL

1 ASSISTANCE PROGRAM OR DRUG PRODUCT DONATION PROGRAM MAY BE ACCEPTED
2 AND DISPENSED UNDER THE PROGRAM.

3 (G) ANY ADDITIONAL CRITERIA ESTABLISHED IN RULES PROMULGATED
4 UNDER THIS SECTION.

5 (6) A PHARMACY OR CHARITABLE CLINIC THAT MEETS THE ELIGIBILITY
6 REQUIREMENTS ESTABLISHED BY THIS SECTION AND ANY RULES PROMULGATED
7 UNDER THIS SECTION MAY DO ANY OF THE FOLLOWING:

8 (A) DISPENSE PRESCRIPTION DRUGS DONATED UNDER THE PROGRAM TO
9 THE MEDICALLY INDIGENT.

10 (B) CHARGE PERSONS RECEIVING DONATED UNUSED PRESCRIPTION DRUGS
11 A HANDLING FEE ESTABLISHED BY RULE BY THE BOARD.

12 (7) A PHARMACY OR CHARITABLE CLINIC THAT MEETS THE ELIGIBILITY
13 REQUIREMENTS ESTABLISHED BY THIS SECTION AND ANY RULES PROMULGATED
14 UNDER THIS SECTION AND THAT ACCEPTS DONATED UNUSED PRESCRIPTION
15 DRUGS FOR THE PROGRAM SHALL DO ALL OF THE FOLLOWING:

16 (A) COMPLY WITH ALL APPLICABLE FEDERAL LAWS AND REGULATIONS
17 AND STATE LAWS AND RULES RELATED TO THE STORAGE AND DISTRIBUTION OF
18 HARMFUL DRUGS.

19 (B) INSPECT ALL DONATED UNUSED PRESCRIPTION DRUGS BEFORE
20 DISPENSING THE PRESCRIPTION DRUGS TO DETERMINE THAT SUCH DRUGS ARE
21 NOT ADULTERATED.

22 (C) DISPENSE PRESCRIPTION DRUGS ONLY PURSUANT TO A
23 PRESCRIPTION ISSUED BY A HEALTH PROFESSIONAL.

24 (8) UNUSED PRESCRIPTION DRUGS DONATED UNDER THE PROGRAM SHALL
25 NOT BE RESOLD. REIMBURSEMENT FROM A GOVERNMENTAL AGENCY TO A
26 CHARITABLE CLINIC DOES NOT CONSTITUTE RESALE OF PRESCRIPTION DRUGS.

27 (9) THE FOLLOWING PERSONS THAT ARE IN COMPLIANCE WITH THIS

1 SECTION AND ANY RULES PROMULGATED UNDER THIS SECTION AND IN THE
2 ABSENCE OF BAD FAITH OR GROSS NEGLIGENCE ARE NOT SUBJECT TO
3 CRIMINAL OR CIVIL LIABILITY FOR INJURY OTHER THAN DEATH, OR LOSS TO
4 PERSON OR PROPERTY, OR PROFESSIONAL DISCIPLINARY ACTION:

5 (A) THE BOARD.

6 (B) THE DEPARTMENT.

7 (C) A HEALTH FACILITY OR AGENCY, ADULT FOSTER CARE FACILITY,
8 ASSISTED LIVING FACILITY, OR MANUFACTURER THAT DONATES PRESCRIPTION
9 DRUGS TO THE PROGRAM.

10 (D) A MANUFACTURER OR ITS REPRESENTATIVE THAT DIRECTLY DONATES
11 PRESCRIPTION DRUGS IN PROFESSIONAL SAMPLES TO A PHARMACY OR
12 CHARITABLE CLINIC FOR THE PROGRAM.

13 (E) A PHARMACY, CHARITABLE CLINIC, OR HEALTH PROFESSIONAL THAT
14 ACCEPTS OR DISPENSES PRESCRIPTION DRUGS FOR THE PROGRAM.

15 (F) A PHARMACY OR CHARITABLE CLINIC THAT EMPLOYS A HEALTH
16 PROFESSIONAL WHO ACCEPTS UNUSED PRESCRIPTION DRUGS FOR THE PROGRAM
17 AND WHO MAY LEGALLY DISPENSE PRESCRIPTION DRUGS UNDER THIS PART.

18 (10) FOR PURPOSES OF THE LAWFUL DONATION, ACCEPTANCE, OR
19 DISPENSING OF A PRESCRIPTION DRUG MANUFACTURED BY THE MANUFACTURER
20 THAT IS DONATED BY ANY ENTITY UNDER THE PROGRAM, A MANUFACTURER IS
21 NOT, IN THE ABSENCE OF BAD FAITH OR GROSS NEGLIGENCE, SUBJECT TO
22 CRIMINAL OR CIVIL LIABILITY FOR INJURY OTHER THAN FOR DEATH, OR
23 LOSS TO PERSON OR PROPERTY, INCLUDING, BUT NOT LIMITED TO,
24 LIABILITY FOR FAILURE TO TRANSFER OR COMMUNICATE PRODUCT OR
25 CONSUMER INFORMATION OR FOR FAILURE TO TRANSFER OR COMMUNICATE THE
26 EXPIRATION DATE OF THE DONATED PRESCRIPTION DRUG.

27 (11) THE BOARD SHALL PROMULGATE EMERGENCY RULES UNDER THE

1 ADMINISTRATIVE PROCEDURES ACT OF 1969 BY JULY 1, 2009 TO ESTABLISH,
2 IMPLEMENT, AND ADMINISTER THE PROGRAM. PERMANENT RULES SHALL BE
3 PROMULGATED PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969
4 AS SOON AS PRACTICAL AFTER EMERGENCY RULES HAVE BEEN PROMULGATED.
5 THE DEPARTMENT SHALL INCLUDE ALL OF THE FOLLOWING IN RULES
6 PROMULGATED UNDER THIS SECTION:

7 (A) ELIGIBILITY CRITERIA FOR PHARMACIES AND CHARITABLE CLINICS
8 AUTHORIZED TO RECEIVE AND DISPENSE DONATED PRESCRIPTION DRUGS FOR
9 THE PROGRAM.

10 (B) ELIGIBILITY CRITERIA FOR THE MEDICALLY INDIGENT.

11 (C) ESTABLISHMENT OF A FORMULARY THAT INCLUDES ALL
12 PRESCRIPTION DRUGS APPROVED BY THE FEDERAL FOOD AND DRUG
13 ADMINISTRATION.

14 (D) STANDARDS AND PROCEDURES FOR TRANSFER, ACCEPTANCE, SAFE
15 STORAGE, SECURITY, AND DISPENSING OF DONATED PRESCRIPTION DRUGS.

16 (E) A PROCESS FOR SEEKING INPUT FROM THE DEPARTMENT IN
17 ESTABLISHING PROVISIONS THAT AFFECT HEALTH FACILITIES AND AGENCIES,
18 ADULT FOSTER CARE FACILITIES, AND ASSISTED LIVING FACILITIES.

19 (F) A PROCESS FOR SEEKING INPUT FROM THE DEPARTMENT IN
20 ESTABLISHING PROVISIONS THAT AFFECT MENTAL HEALTH AND SUBSTANCE
21 ABUSE CLIENTS.

22 (G) STANDARDS AND PROCEDURES FOR INSPECTING DONATED
23 PRESCRIPTION DRUGS TO ENSURE THAT THE PRESCRIPTION DRUGS MEET THE
24 REQUIREMENTS OF THE PROGRAM AND TO ENSURE THAT, IN THE PROFESSIONAL
25 JUDGMENT OF THE PHARMACIST, THE PRESCRIPTION DRUGS MEET ALL FEDERAL
26 AND STATE STANDARDS FOR PRODUCT INTEGRITY.

27 (H) PROCEDURES FOR DESTRUCTION OF PRESCRIPTION DRUGS OR OTHER

1 MEDICATIONS THAT ARE DONATED AND THAT ARE CONTROLLED SUBSTANCES OR
2 OTHERWISE INELIGIBLE FOR DISTRIBUTION UNDER THE PROGRAM.

3 (I) PROCEDURES FOR VERIFYING WHETHER THE CHARITABLE CLINIC,
4 PHARMACY, RESPONSIBLE PHARMACIST, OR OTHER HEALTH PROFESSIONALS
5 PARTICIPATING IN THE PROGRAM ARE LICENSED AND IN GOOD STANDING WITH
6 THE APPLICABLE LICENSING BOARD.

7 (J) ESTABLISHMENT OF STANDARDS FOR ACCEPTANCE OF UNUSED
8 PRESCRIPTION DRUGS FROM HEALTH FACILITIES AND AGENCIES, ADULT
9 FOSTER CARE FACILITIES, AND ASSISTED LIVING FACILITIES.

10 (K) ANY OTHER STANDARDS AND PROCEDURES THE BOARD CONSIDERS
11 APPROPRIATE OR NECESSARY TO ESTABLISH, IMPLEMENT, AND ADMINISTER
12 THE PROGRAM.

13 (12) PURSUANT TO THE RULES PROMULGATED AND PROCEDURES
14 ESTABLISHED FOR THE PROGRAM UNDER THIS SECTION, A RESIDENT OF A
15 HEALTH FACILITY OR AGENCY, ADULT FOSTER CARE FACILITY, OR ASSISTED
16 LIVING FACILITY, OR THE REPRESENTATIVE OR GUARDIAN OF A RESIDENT,
17 MAY DONATE UNUSED PRESCRIPTION DRUGS, OTHER THAN CONTROLLED
18 SUBSTANCES, FOR DISPENSATION TO THE MEDICALLY INDIGENT UNDER THE
19 PROGRAM.

20 (13) THIS SECTION DOES NOT IMPAIR OR SUPERSEDE THE PROVISIONS
21 REGARDING THE CANCER DRUG REPOSITORY PROGRAM CREATED IN SECTION
22 17780. IF ANY PROVISION OF THIS SECTION CONFLICTS WITH A PROVISION
23 OF THAT SECTION WITH REGARD TO CANCER DRUGS, THAT SECTION CONTROLS.

24 (14) AS USED IN THIS SECTION:

25 (A) "ADULT FOSTER CARE FACILITY" MEANS AN ADULT FOSTER CARE
26 FACILITY LICENSED UNDER THE ADULT FOSTER CARE FACILITY LICENSING
27 ACT, 1979 PA 218, MCL 400.701 TO 400.737.

1 (B) "CANCER DRUG" MEANS THAT TERM AS DEFINED IN SECTION 17780.

2 (C) "CHARITABLE CLINIC" MEANS A CHARITABLE NONPROFIT
3 CORPORATION OR FACILITY THAT MEETS ALL OF THE FOLLOWING
4 REQUIREMENTS:

5 (i) IS ORGANIZED AS A NOT-FOR-PROFIT CORPORATION PURSUANT TO
6 THE NONPROFIT CORPORATION ACT, 1982 PA 162, MCL 450.2101 TO
7 450.3192.

8 (ii) HOLDS A VALID EXEMPTION FROM FEDERAL INCOME TAXATION
9 ISSUED PURSUANT TO SECTION 501(A) OF THE INTERNAL REVENUE CODE, 26
10 USC 501.

11 (iii) IS LISTED AS AN EXEMPT ORGANIZATION UNDER SECTION 501(C)
12 OF THE INTERNAL REVENUE CODE, 26 USC 501.

13 (iv) PROVIDES ON AN OUTPATIENT BASIS FOR A PERIOD OF LESS THAN
14 24 CONSECUTIVE HOURS TO PERSONS NOT RESIDING OR CONFINED AT THE
15 FACILITY ADVICE, COUNSELING, DIAGNOSIS, TREATMENT, SURGERY, CARE,
16 OR SERVICES RELATING TO THE PRESERVATION OR MAINTENANCE OF HEALTH.

17 (v) HAS A LICENSED OUTPATIENT PHARMACY.

18 (D) "HEALTH FACILITY OR AGENCY" MEANS THAT TERM AS DEFINED IN
19 SECTION 20106.

20 (E) "HEALTH PROFESSIONAL" MEANS ANY OF THE FOLLOWING
21 INDIVIDUALS LICENSED AND AUTHORIZED TO PRESCRIBE AND DISPENSE DRUGS
22 OR TO PROVIDE MEDICAL, DENTAL, OR OTHER HEALTH-RELATED DIAGNOSES,
23 CARE, OR TREATMENT WITHIN THE SCOPE OF HIS OR HER PROFESSIONAL
24 LICENSE:

25 (i) A PHYSICIAN LICENSED TO PRACTICE MEDICINE OR OSTEOPATHIC
26 MEDICINE AND SURGERY UNDER PART 170 OR 175.

27 (ii) A REGISTERED PROFESSIONAL NURSE LICENSED UNDER PART 172.

1 (iii) A PHYSICIAN'S ASSISTANT LICENSED UNDER PART 170.

2 (iv) A DENTIST LICENSED UNDER PART 166.

3 (v) AN OPTOMETRIST LICENSED UNDER PART 174.

4 (vi) A PHARMACIST LICENSED UNDER THIS PART.

5 (vii) A PODIATRIST LICENSED UNDER PART 180.

6 (F) "MEDICALLY INDIGENT" MEANS AN INDIVIDUAL WHO MEETS ALL OF
7 THE FOLLOWING REQUIREMENTS:

8 (i) IS A RESIDENT OF THIS STATE.

9 (ii) IS ELIGIBLE TO RECEIVE MEDICAID OR MEDICARE OR HAS NO
10 HEALTH INSURANCE AND OTHERWISE LACKS REASONABLE MEANS TO PURCHASE
11 PRESCRIPTION DRUGS, AS PRESCRIBED IN RULES PROMULGATED UNDER THIS
12 SECTION.

13 (G) "PROGRAM" MEANS THE UTILIZATION OF UNUSED PRESCRIPTION
14 DRUG REPOSITORY PROGRAM ESTABLISHED UNDER THIS SECTION.