

# SENATE BILL No. 828

March 1, 2016, Introduced by Senators ZORN, SCHMIDT and SCHUITMAKER and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 7333a (MCL 333.7333a), as amended by 2012 PA  
44.

## 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~~**MUST** provide an appropriate electronic

1 format for the reporting of data including, but not limited to,  
2 patient identifiers, the name of the controlled substance  
3 dispensed, date of dispensing, quantity dispensed, prescriber, and  
4 dispenser. The department shall require a veterinarian, pharmacist,  
5 or dispensing prescriber to utilize the electronic data transmittal  
6 process developed by the department or the department's contractor.

7 ~~A- THE DEPARTMENT SHALL NOT REQUIRE A~~ veterinarian, pharmacist, or  
8 dispensing prescriber ~~shall not be required to~~ pay a new fee  
9 dedicated to the operation of the electronic monitoring system ~~and~~  
10 ~~shall not OR TO~~ incur any additional costs solely related to the  
11 transmission of data to the department. The ~~rules promulgated~~  
12 **DEPARTMENT'S AUTHORITY TO PROMULGATE RULES** under this subsection  
13 ~~shall exempt both~~ **DOES NOT INCLUDE THE AUTHORITY TO PROMULGATE OR**  
14 **ENFORCE A RULE THAT EXEMPTS ANY** of the following circumstances from  
15 the reporting requirements **UNDER THIS SECTION:**

16 (a) The administration of a controlled substance directly to a  
17 patient.

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

22 **(C) THE DISPENSING OF BUPRENORPHINE OR A DRUG CONTAINING**  
23 **BUPRENORPHINE AND NALOXONE HYDROCHLORIDE.**

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

27 (a) A designated representative of a board responsible for the

1 licensure, regulation, or discipline of a practitioner, pharmacist,  
2 or other person who is authorized to prescribe, administer, or  
3 dispense controlled substances.

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

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

8 (d) A state-operated ~~medicaid~~ **MEDICAID** program.

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

11 (f) A practitioner or pharmacist who requests information and  
12 certifies that the requested information is for the purpose of  
13 providing medical or pharmaceutical treatment to a bona fide  
14 current patient.

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

17 (h) A practitioner or other person who is authorized to  
18 prescribe controlled substances for the purpose of determining if  
19 prescriptions written by that practitioner or other person have  
20 been dispensed.

21 (i) Until December 31, 2016, the health care payment or  
22 benefit provider for the purposes of ensuring patient safety and  
23 investigating fraud and abuse.

24 (3) Except as otherwise provided in this part, information  
25 submitted under this section shall be used only for bona fide drug-  
26 related criminal investigatory or evidentiary purposes or for the  
27 investigatory or evidentiary purposes in connection with the

1 functions of a disciplinary subcommittee or 1 or more of the  
2 licensing or registration boards created in article 15.

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

7 (5) Except as otherwise provided in this subsection, reporting  
8 under subsection (1) is mandatory for a veterinarian, pharmacist,  
9 and dispensing prescriber. However, the department may issue a  
10 written waiver of the electronic reporting requirement to a  
11 veterinarian, pharmacist, or dispensing prescriber who establishes  
12 grounds that he or she is unable to use the electronic monitoring  
13 system. The department shall require the applicant for the waiver  
14 to report the required information in a manner approved by the  
15 department.

16 (6) In addition to the information required to be reported  
17 annually under section 7112(3), the controlled substances advisory  
18 commission shall include in the report information on the  
19 implementation and effectiveness of the electronic monitoring  
20 system.

21 (7) The department, in consultation with the controlled  
22 substances advisory commission, the Michigan board of pharmacy, the  
23 Michigan board of medicine, the Michigan board of osteopathic  
24 medicine and surgery, the ~~Michigan~~ **DEPARTMENT OF** state police, and  
25 appropriate medical professional associations, shall examine the  
26 need for and may promulgate rules for the production of a  
27 prescription form on paper that minimizes the potential for

1   forgery. The rules ~~shall~~**MUST** not include any requirement that  
2   sequential numbers, bar codes, or symbols be affixed, printed, or  
3   written on a prescription form or that the prescription form be a  
4   state produced prescription form. In examining the need for rules  
5   for the production of a prescription form on paper that minimizes  
6   the potential for forgery, the department shall consider and  
7   identify the following:

8       (a) Cost, benefits, and barriers.

9       (b) Overall cost-benefit analysis.

10      (c) Compatibility with the electronic monitoring system  
11   required under this section.

12      (8) The department may enter into 1 or more contractual  
13   agreements for the administration of this section.

14      (9) The department, all law enforcement officers, all officers  
15   of the court, and all regulatory agencies and officers, in using  
16   the data for investigative or prosecution purposes, shall consider  
17   the nature of the prescriber's and dispenser's practice and the  
18   condition for which the patient is being treated.

19      (10) The data and any report containing any patient  
20   identifiers obtained from the data are not public records and are  
21   not subject to **DISCLOSURE UNDER** the freedom of information act,  
22   1976 PA 442, MCL 15.231 to 15.246.

23      (11) Beginning February 1, 2013 and through February 1, 2016,  
24   the department may issue a written request to a health care payment  
25   or benefit provider to determine if the provider has accessed the  
26   electronic system as provided in subsection (2)(i) in the previous  
27   calendar year and, if so, to determine the number of inquiries the

1 provider made in the previous calendar year and any other  
2 information the department requests in relation to the provider's  
3 access to the electronic system. A health care payment or benefit  
4 provider shall respond to the written request on or before the  
5 March 31 following the request. The department shall collaborate  
6 with health care payment or benefit providers to develop a  
7 reasonable request and reporting form for use under this  
8 subsection.

9 (12) R 338.3162E OF THE MICHIGAN ADMINISTRATIVE CODE IS  
10 RESCINDED.

11 (13) ~~(12)~~ As used in this section:

12 (a) "Department" means the department of licensing and  
13 regulatory affairs.

14 (b) "Health care payment or benefit provider" means a person  
15 that provides health benefits, coverage, or insurance in this  
16 state, including a health insurance company, a nonprofit health  
17 care corporation, a health maintenance organization, a multiple  
18 employer welfare arrangement, a ~~medicaid~~ **MEDICAID** contracted health  
19 plan, or any other person providing a plan of health benefits,  
20 coverage, or insurance subject to state insurance regulation.

21 Enacting section 1. This amendatory act takes effect 90 days  
22 after the date it is enacted into law.