Act No. 36
Public Acts of 2021
Approved by the Governor
July 1, 2021
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STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021

Introduced by Senators Daley, Lauwers, Nesbitt, Theis, Horn and Bizon

ENROLLED SENATE BILL No. 155

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 17703, 17708, 17751, and 17757 (MCL 333.17703, 333.17708, 333.17751, and 333.17757), section 17703 as amended by 2016 PA 528, section 17708 as amended by 2020 PA 4, section 17751 as amended by 2020 PA 136, and section 17757 as amended by 2016 PA 383, and by adding section 17744f.

The People of the State of Michigan enact:

Sec. 17703. (1) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from 1 person to another.

(2) "Device" means an instrument, apparatus, or contrivance, including its components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals, or to affect the structure or function of the body of human beings or other animals.

(3) "Dispense" means the preparation, compounding, packaging, or labeling of a drug pursuant to a prescription or other authorization issued by a prescriber or pursuant to section 17744f.

(4) "Dispensing prescriber" means a prescriber, other than a veterinarian, who dispenses prescription drugs.

(5) Except as otherwise provided in section 17780, "distribute" or "distribution" means to sell, offer for sale, deliver, offer to deliver, broker, give away, or transfer a drug, whether by passage of title or physical movement. The term does not include any of the following:

(a) Dispensing or administering a drug.

(b) The delivery of a drug, or offering to deliver a drug, by a common carrier in the usual course of business as a common carrier.

(c) The delivery of a drug via an automated device under section 17760.

(6) "Drug" means any of the following:

(a) A substance recognized or for which the standards or specifications are prescribed in the official compendium.

(b) A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals.

(c) A substance, other than food, intended to affect the structure or a function of the body of human beings or other animals.

(d) A substance intended for use as a component of a substance specified in subdivision (a), (b), or (c), but not including a device or its components, parts, or accessories.

(7) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(8) "Electronically transmitted prescription" means the communication of an original prescription or refill authorization by electronic means including computer to computer, computer to facsimile machine, or email transmission that contains the same information it contained when the prescriber or his or her agent transmitted the prescription. Electronically transmitted prescription does not include a prescription or refill authorization transmitted by telephone or facsimile machine.

Sec. 17708. (1) "Preceptor" means a pharmacist approved by the board to direct the training of an intern in an approved pharmacy.

(2) "Prescriber" means a licensed dentist, a licensed doctor of medicine, a licensed doctor of osteopathic medicine and surgery, a licensed doctor of podiatric medicine and surgery, a licensed physician's assistant, a licensed optometrist certified under part 174 to administer and prescribe therapeutic pharmaceutical agents, an advanced practice registered nurse as that term is defined in section 17201 who meets the requirements of section 17211a, a licensed veterinarian, or another licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or licensed doctor of osteopathic medicine and surgery.

(3) "Prescription" means an order by a prescriber to fill, compound, or dispense a drug or device written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication. An order transmitted in other than written or hard-copy form must be electronically recorded, printed, or written and immediately dated by the pharmacist, and that record is considered the original prescription. In a health facility or agency licensed under article 17 or other medical institution, an order for a drug or device in the patient's chart is considered for the purposes of this definition the original prescription. For purposes of this part, prescription also includes a standing order issued under section 17744e. Subject to section 17751(2) and (5), prescription includes, but is not limited to, an order for a drug, not including a controlled substance except under circumstances described in section 17763(e), written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber who is licensed to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine in another state.

(4) Subject to subsection (5), "prescription drug" means a drug to which 1 or more of the following apply:

(a) The drug is dispensed pursuant to a prescription.

(b) The drug bears the federal legend "CAUTION: federal law prohibits dispensing without prescription" or "Rx only".

(c) The drug is designated by the board as a drug that may only be dispensed pursuant to a prescription.

(5) For purposes of this part, prescription drug also includes a drug dispensed pursuant to section 17744f.

(6) "Remote pharmacy" means a pharmacy described in sections 17742a and 17742b.

Sec. 17744f. (1) Subject to subsection (2), a pharmacist may dispense an emergency supply of insulin to an individual if the individual has a qualified prescription for insulin in the individual's name with no remaining authorized refills, the individual has previously had a prescription for insulin dispensed at the pharmacy, and, in

the pharmacist's professional judgment, a failure to dispense the emergency supply of insulin might interrupt the individual's ongoing care and have a significant adverse effect on the individual's well-being. A pharmacist who dispenses an emergency supply of insulin under this section shall comply with all of the following:

(a) Before dispensing the emergency supply of insulin, make a reasonable effort to communicate with the prescriber who issued the qualified prescription for insulin regarding dispensing the emergency supply of insulin and document the efforts made.

(b) Document all of the following:

(*i*) The name of the individual receiving the emergency supply of insulin and the date of the dispensing.

(*ii*) The reason for dispensing the emergency supply of insulin.

(*iii*) Evidence of the individual's qualified prescription for insulin.

(*iv*) Information on the individual's diabetes management.

(*v*) Any other information required by the board by rule.

(c) Within 5 business days after dispensing the emergency supply of insulin, inform the prescriber who issued the qualified prescription for insulin, in writing, that an emergency supply of insulin was dispensed under this section.

(d) Inform the individual receiving the emergency supply of insulin that the insulin was dispensed under this section.

(2) An individual shall not receive more than 3 emergency supplies of insulin under this section in 1 calendar year. After an emergency supply of insulin is dispensed to an individual under this section, a pharmacist shall not dispense a subsequent emergency supply of insulin under this section within the same calendar year to that individual unless the individual has since obtained a new qualified prescription for insulin with no remaining authorized refills.

(3) A prescriber or pharmacist is not subject to criminal prosecution, civil liability, or administrative sanction as a result of the pharmacist dispensing an emergency supply of insulin under this section.

(4) The board shall promulgate rules to implement this section.

(5) As used in this section:

(a) "Emergency supply" means up to a 30-day supply.

(b) "Qualified prescription for insulin" means a prescription for insulin that was issued within the 12-month period immediately preceding the date the individual requests an emergency supply of insulin under this section.

Sec. 17751. (1) Except as otherwise provided in section 17744f, a pharmacist shall not dispense a drug requiring a prescription under the federal act or a law of this state except under authority of an original prescription or an equivalent record of an original prescription approved by the board. A pharmacist described in section 17742b(2) may dispense a drug pursuant to an original prescription received at a remote pharmacy if the pharmacist receives, reviews, and verifies an exact digital image of the prescription received at the remote pharmacy before the drug is dispensed at the remote pharmacy.

(2) Subject to subsections (1) and (5), a pharmacist may dispense a prescription written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber in another state, but not including a prescription for a controlled substance except under circumstances described in section 17763(e), only if the pharmacist in the exercise of his or her professional judgment determines all of the following:

(a) Except as otherwise authorized under section 5110, 17744a, or 17744b, if the prescriber is a physician or dentist, that the prescription was issued pursuant to an existing physician-patient or dentist-patient relationship.

(b) That the prescription is authentic.

(c) That the prescribed drug is appropriate and necessary for the treatment of an acute, chronic, or recurrent condition.

(3) A pharmacist or a prescriber shall dispense a prescription only if the prescription falls within the scope of practice of the prescriber.

(4) A pharmacist shall not knowingly dispense a prescription after the death of the prescriber or patient.

(5) A pharmacist shall not dispense a drug or device under a prescription transmitted by facsimile or created in electronic format and printed out for use by the patient unless the document is manually signed by the prescriber. This subsection does not apply to any of the following:

(a) A prescription that is transmitted by a computer to a facsimile machine if that prescription complies with section 17754 or 17754a.

(b) A prescription that is received by a remote pharmacy and made available to a pharmacist described in section 17742b(2) for review and verification in the manner required under subsection (1).

(6) After consultation with and agreement from the prescriber, a pharmacist may add or change a patient's address, a dosage form, a drug strength, a drug quantity, a direction for use, or an issue date with regard to a prescription. A pharmacist shall note the details of the consultation and agreement required under this subsection on the prescription or, if the drug is dispensed at a remote pharmacy, on the digital image of the prescription described in subsection (1), and shall maintain that documentation with the prescription as required in section 17752. A pharmacist shall not change the patient's name, controlled substance prescribed unless authorized to dispense a lower cost generically equivalent drug product under section 17755, or the prescriber's signature with regard to a prescription.

(7) A prescription that is contained within a patient's chart in a health facility or agency licensed under article 17 or other medical institution and that is transmitted to a pharmacy under section 17744 is the original prescription. If all other requirements of this part are met, a pharmacist shall dispense a drug or device under a prescription described in this subsection. A pharmacist may dispense a drug or device under a prescription described in this subsection even if the prescription does not contain the quantity ordered. If a prescription described in this subsection does not contain the quantity ordered, the pharmacist shall consult with the prescriber to determine an agreed-upon quantity. The pharmacist shall record the quantity dispensed on the prescription and shall maintain that documentation with the prescription as required in section 17752.

(8) If, after consulting with a patient, a pharmacist determines in the exercise of his or her professional judgment that dispensing additional quantities of a prescription drug is appropriate for the patient, the pharmacist may dispense, at one time, additional quantities of the prescription drug up to the total number of dosage units authorized by the prescriber on the original prescription for the patient and any refills of the prescription. Except for a controlled substance included in schedule 5 that does not contain an opioid, this subsection does not apply to a prescription for a controlled substance.

Sec. 17757. (1) On receipt of a request made in person or by telephone, a pharmacist engaged in the business of selling drugs at retail shall provide the current selling price of a drug dispensed by that pharmacy or comparative current selling prices of generic and brand name drugs dispensed by that pharmacy. The information must be provided to the person making the request before a drug is dispensed to the person. A person that makes a request for price information under this subsection is not obligated to purchase the drug for which the price or comparative prices are requested.

(2) A pharmacist engaged in the business of selling drugs at retail shall conspicuously display the notice described in subsection (3) at each counter over which prescription drugs are dispensed.

(3) The notice required under subsection (2) must be in substantially the following form:

NOTICE TO CONSUMERS

ABOUT PRESCRIPTION DRUGS

Under Michigan law, you have the right to find out the price of a prescription drug before the pharmacist fills the prescription. You are under no obligation to have the prescription filled here and may use this price information to shop around at other pharmacies. You may request price information in person or by telephone.

Every pharmacy has the current selling prices of both generic and brand name drugs dispensed by the pharmacy.

Ask your pharmacist if a lower-cost generic drug is available to fill your prescription. A generic drug contains the same medicine as a brand name drug and is a suitable substitute in most instances.

A generic drug may not be dispensed by your pharmacist if your doctor has written "dispense as written" or the initials "d.a.w." on the prescription.

If you have questions about the drugs that have been prescribed for you, ask your doctor or pharmacist for more information.

To avoid dangerous drug interactions, let your doctor and pharmacist know about any other medications you are taking. This is especially important if you have more than 1 doctor or have prescriptions filled at more than 1 pharmacy.

(4) The notice required under subsection (2) must also contain the address and phone number of the board and the department. The text of the notice must be in at least 32-point bold type and must be printed on paper at least 11 inches by 17 inches in size. The notice may be printed on multiple pages.

(5) The department shall provide a copy of the notice required under subsection (2) to each licensee. The department shall provide additional copies if needed. A person may duplicate or reproduce the notice if the duplication or reproduction is a true copy of the notice as produced by the department, without any additions or deletions.

(6) The pharmacist shall furnish to the purchaser of a prescription drug at the time the drug is delivered to the purchaser a receipt evidencing the transactions that contains all of the following:

(a) The brand name of the drug, if applicable.

(b) The name of the manufacturer or the supplier of the drug, if the drug does not have a brand name.

(c) The strength of the drug, if significant.

(d) The quantity dispensed, if applicable.

(e) The name and address of the pharmacy.

(f) The serial number of the prescription, a reference to the standing order issued under section 17744e, or, if the prescription drug is dispensed pursuant to section 17744f, a reference to section 17744f.

(g) The date the prescription was originally dispensed.

(h) The name of the prescriber or, if prescribed under the prescriber's delegatory authority, the name of the delegatee. If the prescription drug is dispensed pursuant to section 17744f, the name of the original prescriber and the pharmacist dispensing the prescription drug.

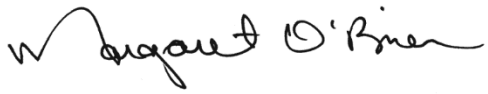
(i) Except as otherwise authorized under section 5110, 17744a, 17744b, or 17744e, the name of the patient for whom the drug was prescribed or dispensed.

(j) The price for which the drug was sold to the purchaser.

(7) The items required under subsection (6)(a), (b), and (c) may be omitted from a receipt by a pharmacist only if the omission is expressly required by the prescriber. The pharmacist shall retain a copy of each receipt furnished under subsection (6) for 90 days. The inclusion of the items required under subsection (6) on the prescription container label is a valid receipt to the purchaser. Including the items required under subsection (6) on the written prescription form and retaining the form constitutes retention of a copy of the receipt.

(8) The department, in consultation with the board, may promulgate rules to implement this section.

This act is ordered to take immediate effect.



Secretary of the Senate

Clerk of the House of Representatives

Approved_____

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Governor