

## EDUCATION ABOUT PRESCRIPTION OPIOID ABUSE, PROTECTIONS FROM ABUSE, AND TREATMENT

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<http://www.house.mi.gov/hfa>

**House Bill 4403 as enacted**  
**Public Act 253 of 2017**  
**Sponsor: Rep. Andy Schor**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bills 4406 & 4407 as enacted**  
**Public Acts 254 & 255 of 2017**  
**Sponsor: Rep. Beth Griffin**

**House Bill 4408 as enacted**  
**Public Act 246 of 2017**  
**Sponsor: Rep. Joseph N. Bellino, Jr.**

**House Committee: Health Policy**  
**Senate Committee: Health Policy**  
**Complete to 1-9-18**

**BRIEF SUMMARY:** House Bills 4403, 4406, 4407, and 4408 are part of a larger effort to combat the opioid epidemic in Michigan and nationwide. The bills do all of the following:

- Specifically provide that an individual may receive medically necessary treatment for opioid use. (HB 4403)
- Require the Prescription Drug and Opioid Abuse Commission to develop recommendations on teaching about opioid abuse in schools. (HB 4406)
- Require the Michigan Department of Education (MDE) to make available a model program of instruction based on those recommendations to school districts and public school academies and to ensure that the model program, at least, is included in the state's Model Core Curriculum content standards and the health education component of the Merit Curriculum graduation requirements. (HB 4407)
- Require a prescriber to discuss certain issues and obtain a signed parental consent form before issuing the first prescription to a minor in a single course of treatment for a controlled substance containing an opioid. Failure to comply with these requirements would be a violation punishable by probation, limitation, denial, fine, suspension, revocation, or permanent revocation of the prescriber's license. (HB 4408)
- Require a prescriber or other health professional to provide certain information about opioids and controlled substances to a patient or the patient's representative, and to obtain a signature acknowledging receipt of the information, before prescribing an opioid to the patient for other than inpatient use. (HB 4408)

All four bills were signed into law by the lieutenant governor on December 27, 2017. House Bill 4408 took effect on that date. House Bills 4403, 4406, and 4407 take effect March 27, 2018—90 days after their date of enactment, as prescribed by an enacting section in each of those bills.

**FISCAL IMPACT:** Please see *Fiscal Information*, below, for detailed fiscal information on the individual bills.

**THE CONTENT OF THE BILLS:**

**House Bill 4403**

House Bill 4403 amends the section of the Social Welfare Act that describes the medical services that may be provided under the Act (the *Medicaid* program). In addition to certain medical, surgical, nursing home, pharmaceutical, and psychiatric services, among others, the bill requires that an eligible individual may receive medically necessary acute medical detoxification for opioid use disorder, medically necessary inpatient care at an approved facility, or care in an appropriately licensed substance use disorder treatment facility.<sup>1</sup>

MCL 400.109

**House Bill 4406**

House Bill 4406 adds a section to the Public Health Code to require the Prescription Drug and Opioid Abuse Commission to develop and provide recommendations for the instruction of students on prescription opioid drug abuse to the Michigan Department of Education (MDE) by July 1, 2018. These must include recommendations for instruction on the prescription drug epidemic and the connection between prescription opioid abuse and addiction to other drugs.

[The Commission, created within the Michigan Department of Licensing and Regulatory Affairs by Governor Snyder's Executive Order No. 2016-15,<sup>2</sup> replaced the Controlled Substances Advisory Commission and the Advisory Committee on Pain and Symptom Management. It was charged with reviewing the 2015 Report of Findings and Recommendations for Action from the Michigan Prescription Drug and Opioid Abuse Task Force and developing and proposing policies to implement those recommendations, among other tasks.]

Proposed MCL 333.7113a

**House Bill 4407**

House Bill 4407 adds a section to the Revised School Code to require the MDE to make available to school districts and public school academies (PSAs, or charter schools) a model program of instruction on prescription opioid drug abuse based on the recommendations from the Commission under HB 4406, above, no later than July 1, 2019. This program must at least include instruction on the prescription drug epidemic and the connection between prescription opioid abuse and addiction to other drugs.

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<sup>1</sup> The Medicaid Provider Manual includes these provisions in Section 12: Substance Abuse Services (beginning p.76). <http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf>

<sup>2</sup> [https://www.michigan.gov/documents/snyder/EO\\_2016-15\\_527251\\_7.pdf](https://www.michigan.gov/documents/snyder/EO_2016-15_527251_7.pdf)

Additionally, the MDE must ensure that the state model academic standards for health education under Section 1278a of the Code<sup>3</sup> include instruction on prescription opioid drug abuse, including at least the model program of instruction described above. These changes must be in place beginning in the 2019-2020 school year.

[According to the MDE, opioid abuse prevention will be taught within the context of the Michigan Model for Health™ (MMH), an evidence-based curriculum recognized by the Substance Abuse and Mental Health Services Administration and listed on their National Registry of Effective and Promising Programs. The MMH curriculum includes existing lessons on substance abuse prevention for every grade level that can be built upon as recommendations from the Commission warrant.]

Proposed MCL 380.1170b

### **House Bill 4408**

House Bill 4408 adds a section to the Public Health Code to require a prescriber<sup>4</sup> to discuss certain issues and obtain a signed parental consent form before issuing the first prescription to a minor in a single course of treatment for a controlled substance containing an opioid. The bill amends two existing sections to make failure to comply with these requirements a violation punishable by probation, limitation, denial, fine, suspension, revocation, or permanent revocation of the prescriber's license. The bill also adds a section to require prescribers or health professionals to provide certain information and obtain a signed acknowledgment before prescribing an opioid to any patient.

#### **Provision of information concerning minors**

Specifically, beginning June 1, 2018, with some exceptions described later, the bill requires a prescriber to do both of the following:

- Discuss all of the following with a minor and the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment, before issuing to the minor the first prescription in a single course of treatment for a controlled substance containing an opioid, regardless of whether the prescriber modifies the dose during the course of treatment:
  - The risks of addiction and overdose associated with the controlled substance.
  - The increased risk of addiction to a controlled substance for an individual suffering from both mental and substance abuse disorders.

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<sup>3</sup> MCL 380.1278a lists the requirements for a high school diploma, including one credit of health and physical education.

<sup>4</sup> "**Prescriber**" is defined in Section 17708 of the Public Health Code as 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 of the Code to administer and prescribe therapeutic pharmaceutical agents, an advanced practice registered nurse as that term is defined in Section 17201 of the Code 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.

- The danger of taking a controlled substance containing an opioid with benzodiazepine, alcohol, or another central nervous system depressant.
  - Any other information in the patient counseling information section of the label for the controlled substance that is required in section 57(c)(18) of Part 201 (Labeling) of the Code of Federal Regulations (including information necessary for the patient to take the drug safely and effectively).
- Obtain the signature of the minor's parent or guardian on a *Start Talking* consent form (described below). Another adult authorized to consent to the minor's medical treatment may also sign the form, but in that case the prescriber may only prescribe up to a single 72-hour supply of the controlled substance. The prescriber must include the signed form in the minor's medical record.

### ***Exemptions***

These requirements do not apply in any of the following circumstances:

- If the minor's treatment is associated with or incident to a medical emergency.
- If the minor's treatment is associated with or incident to a surgery, regardless of whether the surgery is performed on an inpatient or outpatient basis.
- If, in the prescriber's professional judgment, fulfilling the requirements would be detrimental to the minor's health or safety.
- If the minor's treatment is rendered in a hospice or oncology department of a hospital, or if the prescription is issued at the time of discharge from one of those facilities.
- If the consent of the minor's parent or guardian is not legally required for the minor to obtain treatment.

### ***Definitions***

The bill also defines all of the following terms, as used in Section 7303b:

A ***Start Talking consent form*** must be a separate document from any other document that a prescriber uses to obtain informed consent and must contain all of the following:

- The name and quantity of the controlled substance being prescribed for the minor and the amount of the initial dose.
- A statement indicating that a controlled substance is a drug or other substance that the U.S. Drug Enforcement Administration has identified as having a potential for abuse.
- A statement certifying that the prescriber discussed with the minor, and with the minor's parent, guardian or authorized adult, the topics described above.
- The number of refills, if any, that are authorized by the prescription.
- A space for the signature of the minor's parent, guardian, or authorized adult to consent to the minor's medical treatment, and a space for the date signed.

***Another adult authorized to consent to the minor's medical treatment*** means an adult to whom a minor's parent or guardian has given written authorization to consent to the minor's medical treatment.

***Medical emergency*** means a situation that, in the prescriber's good-faith medical judgment, creates an immediate threat of serious risk to the life or physical health of the minor.

***Minor*** means an individual under 18 years old who is not emancipated.

The bill includes failure to comply with these requirements (discussing the topics listed above with the minor and parent, guardian, or authorized adult, and obtaining a signed consent form) among violations of the Code under Section 16221. The Department of Licensing and Regulatory Affairs would investigate allegations of violation as it does for the 21 offenses currently listed in that section. If the allegations are substantiated, the prescriber would be subject to probation, limitation, denial, fine, suspension, revocation, or permanent revocation of his or her license by a disciplinary subcommittee.

#### **Provision of information to all patients**

Additionally, the bill requires that, beginning June 1, 2018, a licensed prescriber or other health professional must provide information on all of the following to a patient or patient's representative before prescribing an opioid for other than inpatient use:

- The danger of opioid addiction.
- How to properly dispose of an expired, unused, or unwanted controlled substance.
- That the delivery of a controlled substance is a felony under Michigan law.
- If the patient is pregnant or is a female of reproductive age, the short- and long-term effects of exposing a fetus to a controlled substance.

After providing this information, the licensed prescriber or other health professional must obtain the patient's or patient representative's signature acknowledging receipt and include the signed form in the patient's medical or clinical file.

MCL 333.16221 and 333.16226 and proposed MCL 333.7303b and 333.7303c

#### ***BACKGROUND INFORMATION:***

Michigan's October 2015 Prescription Drug & Opioid Abuse Task Force report<sup>5</sup> included a series of findings and recommendations.

HBs 4406 and 4407 address a task force recommendation, to some extent. Finding that public awareness of opioid and prescription drug abuse is low, the task force recommended a multifaceted public awareness campaign, including programs that help children to

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<sup>5</sup> [http://www.michigan.gov/documents/snyder/Prescription\\_Drug\\_and\\_Opioid\\_Task\\_Force\\_Report\\_504140\\_7.pdf](http://www.michigan.gov/documents/snyder/Prescription_Drug_and_Opioid_Task_Force_Report_504140_7.pdf)

understand the dangers of prescription drug abuse. Incorporating education about opioid abuse into the health education curriculum is intended to address this concern.

HB 4408, in requiring patients to be given information about opioid addiction and the proper disposal of controlled substances, addresses in part a task force recommendation for a public awareness campaign to inform the public of the dangers of abuse and how to safeguard and properly dispose of medicines.

***FISCAL INFORMATION:***

House Bill 4403 should have no fiscal impact, as these services are already covered under Medicaid.

House Bill 4406 would not result in any significant fiscal impacts on the Department of Licensing and Regulatory Affairs or other units of state and local government.

House Bill 4407 would result in a cost increase for the Department of Education and an indeterminate cost increase for school districts and public school academies (PSAs). The Department of Education has noted they would incur an estimated cost increase of \$250,000 for administrative resources in making available a grade- and age-appropriate model program of instruction on prescription opioid drug abuse to school districts and PSAs. School districts and PSAs would then incur an indeterminate cost increase, at least initially, for administrative resources to include in the revised model core academic curriculum content standards for health education and the subject area content expectations and guidelines for health education instruction on prescription opioid drug abuse.

House Bill 4408 would not create any significant fiscal impact on the Department of Licensing and Regulatory Affairs or other units of state or local government.

HB 4408 would have an indeterminate fiscal impact on the state's correctional system and on local units of government. Information is not available on the number of persons who might be found in violation and subsequently convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how court caseloads were affected and on related administrative costs. Any increases in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

***ARGUMENTS:***

***For:***

Supporters praised these bills as a series of measures which, taken together, would educate the public about the dangers of prescription opioid abuse, make it more difficult for opioids to be dispensed, and improve the treatment for individuals suffering from opioid addiction.

HBs 4406 and 4407, they say, would incorporate education about prescription opioid drug abuse into schools' health education curriculum at every grade level.

HB 4408 would make it more difficult for a person to obtain prescription opioids, but is aimed at stemming abuse by minors, by requiring an education component and companion parental consent form before a minor may be prescribed a controlled substance containing an opioid. (The bill includes certain, generally health-related, exceptions from this requirement.) The bill would also provide for educating patients prescribed opioids for outpatient use about on the danger of opioid addiction.

Finally, proponents stated that HB 4403 would merely codify existing Medicaid payment practices for substance use disorder treatments.

***Against:***

No arguments were offered in opposition to the bills.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.