OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 29, 2024

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB232

By: Garvin of the Senate and McEntire of the House

Title: Practice of pharmacy; allowing pharmacist to test or screen for and initiate therapy for certain conditions; dispensing; pharmacy technicians; ratio.

---

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.

2. That the attached Conference Committee Substitute (Request #3856) be adopted.

Respectfully submitted,

SENATE CONFEREES:

Garvin

Deevers

Rosino

Hicks

Haste

HOUSE CONFEREES:

Conference Committee on Business and Conference

Senate Action_____Date_____ House Action_____Date_____

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 232 By: Garvin of the Senate

and

McEntire of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the practice of pharmacy; allowing pharmacist to test or screen for and initiate drug therapy for minor, nonchronic health conditions; specifying allowed tests; allowing pharmacist to dispense certain products under certain protocol; directing adoption of rules; amending 59 O.S. 2021, Section 353.1, as amended by Section 6, Chapter 288, O.S.L. 2022 (59 O.S. Supp. 2023, Section 353.1), which relates to definitions used in the Oklahoma Pharmacy Act; modifying and adding definitions; amending 59 O.S. 2021, Section 353.18A, which relates to pharmacy technicians; establishing certain pharmacy ratio; updating statutory language and references; prohibiting certain pharmacy benefits management contract terms; establishing certain drug pricing requirement; and providing for codification.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 353.31 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A pharmacist may test or screen for and initiate drug therapy for minor, nonchronic health conditions as defined in Section 353.1 of Title 59 of the Oklahoma Statutes, except that a pharmacist may not test or screen for or initiate drug therapy for streptococcus to individuals under six (6) years of age.

B. To test for minor, nonchronic health conditions under this section, the pharmacist may use any test that may guide clinical decision-making and that is:

1. Approved by, cleared by, or authorized under an emergency use authorization by the United States Food and Drug Administration; and

2. Waived under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) or deemed to be CLIA-waived for use in patient care settings operating under a CLIA certificate.

C. A pharmacist may dispense non-abortifacient self-administered hormonal contraceptives under the protocol established pursuant to subsection D of this section, regardless of whether the patient has obtained a prescription, subject to the following conditions:

1. The pharmacist must have a standing order or similar arrangement with a physician as approved by the State Board of Pharmacy in accordance with the protocol established under subsection D of this section;

2. The pharmacist may only dispense non-abortifacient self-administered hormonal contraceptives to biological women; and

3. The pharmacist shall not dispense abortifacient self-administered hormonal contraceptives.

D. The State Board of Pharmacy shall adopt rules establishing a protocol for dispensing non-abortifacient self-administered hormonal contraceptives as described in subsection C of this section by January 1, 2025.

SECTION 2. AMENDATORY 59 O.S. 2021, Section 353.1, as amended by Section 6, Chapter 288, O.S.L. 2022 (59 O.S. Supp. 2023, Section 353.1), is amended to read as follows:

Section 353.1. For the purposes of the Oklahoma Pharmacy Act:

1. "Accredited program" means those seminars, classes, meetings, work projects, and other educational courses approved by the State Board of Pharmacy for purposes of continuing professional education;

2. "Act" means the Oklahoma Pharmacy Act;

3. "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient;

4. "Assistant pharmacist" means any person presently licensed as an assistant pharmacist in ~~the State of Oklahoma~~ this state by the Board pursuant to Section 353.10 of this title and for the

purposes of the Oklahoma Pharmacy Act shall be considered the same as a pharmacist, except where otherwise specified;

5. "Board" or "State Board" means the State Board of Pharmacy;

6. "Certify" or "certification of a prescription" means the review of a filled prescription by a licensed pharmacist or a licensed practitioner with dispensing authority to confirm that the medication, labeling, and packaging of the filled prescription are accurate and meet all requirements prescribed by state and federal law. For the purposes of this paragraph, "licensed practitioner" shall not include optometrists with dispensing authority;

7. "Chemical" means any medicinal substance, whether simple or compound or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin;

8. "Compounding" means the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug. Compounding includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns;

9. "Continuing professional education" means professional, pharmaceutical education in the general areas of the socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; and the etiology, characteristics, and therapeutics of the diseased state;

10. "Dangerous drug", "legend drug", "prescription drug", or "Rx Only" means a drug:

a. for human use subject to 21 U.S.C., Section 353(b)(1), or

b. is labeled "Prescription Only", or labeled with the following statement: "Caution: Federal law restricts this drug ~~except for~~ to use by or on the order of a licensed veterinarian.";

11. "Director" means the Executive Director of the State Board of Pharmacy unless context clearly indicates otherwise;

12. "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order including the preparation and delivery of a drug or device to a patient or a patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispense includes sell, distribute, leave with, give away, dispose of, deliver, or supply;

13. "Dispenser" means a retail pharmacy, hospital pharmacy, a group of chain pharmacies under common ownership and control that do not act as a wholesale distributor, or any other person authorized by law to dispense or administer prescription drugs, and the affiliated warehouses or distributions of such entities under common ownership and control that do not act as a wholesale distributor. For the purposes of this paragraph, ~~"dispenser"~~ dispenser does not

mean a person who dispenses only products to be used in animals in accordance with 21 U.S.C., Section 360b(a)(5);

14. "Distribute" or "distribution" means the sale, purchase, trade, delivery, handling, storage, or receipt of a product, and does not include the dispensing of a product pursuant to a prescription executed in accordance with 21 U.S.C., Section 353(b)(1) or the dispensing of a product approved under 21 U.S.C., Section 360b(b); provided, taking actual physical possession of a product or title shall not be required;

15. "Doctor of Pharmacy" means a person licensed by the Board to engage in the practice of pharmacy. The terms "pharmacist", "D.Ph.", and "Doctor of Pharmacy" shall be interchangeable and shall have the same meaning wherever they appear in the Oklahoma Statutes and the rules promulgated by the Board;

16. "Drug outlet" means all manufacturers, repackagers, outsourcing facilities, wholesale distributors, third-party logistics providers, pharmacies, and all other facilities which are engaged in dispensing, delivery, distribution, or storage of dangerous drugs;

17. "Drugs" means all medicinal substances and preparations recognized by the United States ~~Pharmacopoeia~~ Pharmacopeia and National Formulary, or any revision thereof, and all substances and preparations intended for external and/or internal use in the cure, diagnosis, mitigation, treatment, or prevention of disease in humans

or animals and all substances and preparations, other than food, intended to affect the structure or any function of the body of a human or animals;

18. "Drug sample" means a unit of a prescription drug packaged under the authority and responsibility of the manufacturer that is not intended to be sold and is intended to promote the sale of the drug;

19. "Durable medical equipment" has the same meaning as provided by Section ~~2~~ 375.2 of this ~~act~~ title;

20. "Filled prescription" means a packaged prescription medication to which a label has been affixed which contains such information as is required by the Oklahoma Pharmacy Act;

21. "Hospital" means any institution licensed as a hospital by this state for the care and treatment of patients, or a pharmacy operated by the Oklahoma Department of Veterans Affairs;

22. "Licensed practitioner" means an allopathic physician, osteopathic physician, podiatric physician, dentist, veterinarian, or optometrist licensed to practice and authorized to prescribe dangerous drugs within the scope of practice of such practitioner;

23. "Manufacturer" or "virtual manufacturer" means with respect to a product:

a. a person that holds an application approved under 21 U.S.C., Section 355 or a license issued under 42 U.S.C., Section 262 for such product, or if such

product is not the subject of an approved application or license, the person who manufactured the product,

b. a co-licensed partner of the person described in subparagraph a of this paragraph that obtains the product directly from a person described in this subparagraph or subparagraph a of this paragraph,

c. an affiliate of a person described in subparagraph a or b of this paragraph who receives the product directly from a person described in this subparagraph or in subparagraph a or b of this paragraph, or

d. a person who contracts with another to manufacture a product;

24. "Manufacturing" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, and the promotion and marketing of such drugs or devices. The term ~~"manufacturing"~~ manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by licensed pharmacies, licensed practitioners, or other persons;

25. "Medical gas" means those gases including those in liquid state upon which the manufacturer or distributor has placed one of several cautions, such as "Rx Only", in compliance with federal law;

26. "Medical gas order" means an order for medical gas issued by a licensed prescriber;

27. "Medical gas distributor" means a person licensed to distribute, transfer, wholesale, deliver, or sell medical gases on drug orders to suppliers or other entities licensed to use, administer, or distribute medical gas and may also include a patient or ultimate user;

28. "Medical gas supplier" means a person who dispenses medical gases on drug orders only to a patient or ultimate user;

29. "Medicine" means any drug or combination of drugs which has the property of curing, preventing, treating, diagnosing, or mitigating diseases, or which is used for that purpose;

30. "Minor, nonchronic health condition" means a typically short-term health condition that is generally managed with noncontrolled drug therapies, minimal treatment, or self-care, and is limited to the following:

a. influenzas,

b. streptococcus,

c. SARS-CoV-2,

d. lice, and

e. other emerging and existing public health threats identified by the State Department of Health if permitted by an order, rule, or regulation;

31. "Nonprescription drugs" means medicines or drugs which are sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government. Such items shall also include medical and dental supplies and bottled or nonbulk chemicals which are sold or offered for sale to the general public if such articles or preparations meet the requirements of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A., Section 321 et seq.;

~~31.~~ 32. "Outsourcing facility" including "virtual outsourcing facility" means a facility at one geographic location or address that:

a. is engaged in the compounding of sterile drugs,

b. has elected to register as an outsourcing facility, and

c. complies with all requirements of 21 U.S.C., Section 353b;

~~32.~~ 33. "Package" means the smallest individual saleable unit of product for distribution by a manufacturer or repackager that is intended by the manufacturer for ultimate sale to the dispenser of such product. For the purposes of this paragraph, "individual

saleable unit" means the smallest container of a product introduced into commerce by the manufacturer or repackager that is intended by the manufacturer or repackager for individual sale to a dispenser;

~~33.~~ 34. "Person" means an individual, partnership, limited liability company, corporation, or association, unless the context otherwise requires;

~~34.~~ 35. "Pharmacist-in-charge" or "PIC" means the pharmacist licensed in this state responsible for the management control of a pharmacy and all other aspects of the practice of pharmacy in a licensed pharmacy as defined by Section 353.18 of this title;

~~35.~~ 36. "Pharmacy" means a place regularly licensed by the State Board of Pharmacy in which prescriptions, drugs, medicines, chemicals, and poisons are compounded or dispensed or such place where pharmacists practice the profession of pharmacy, or a pharmacy operated by the Oklahoma Department of Veterans Affairs;

~~36.~~ 37. "Pharmacy technician", "technician", "Rx tech", or "tech" means a person issued a ~~Technician~~ technician permit by the State Board of Pharmacy to assist the pharmacist and perform nonjudgmental, technical, manipulative, non-discretionary functions in the prescription department under the immediate and direct supervision of a pharmacist;

~~37.~~ 38. "Poison" means any substance which when introduced into the body, either directly or by absorption, produces violent,

morbid, or fatal changes, or which destroys living tissue with which such substance comes into contact;

~~38.~~ 39. "Practice of pharmacy" means:

a. the interpretation and evaluation of prescription orders,

b. the compounding, dispensing, administering, and labeling of drugs and devices, except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged legend drugs and devices,

c. the participation in drug selection and drug utilization reviews,

d. the proper and safe storage of drugs and devices and the maintenance of proper records thereof,

e. the responsibility for advising by counseling and providing information, where professionally necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and devices,

f. the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of a pharmacy, ~~or~~

g. the ordering, performing, and interpreting of tests for minor, nonchronic health conditions that meet the requirements of Section 1 of this act and the

initiation of drug therapy for minor, nonchronic health conditions,

h. the dispensing of non-abortifacient self-administered hormonal contraceptives as provided by Section 1 of this act, or

i. the provision of those acts or services that are necessary to provide pharmaceutical care;

~~39.~~ 40. "Preparation" means an article which may or may not contain sterile products compounded in a licensed pharmacy pursuant to the order of a licensed prescriber;

~~40.~~ 41. "Prescriber" means a person licensed in this state who is authorized to prescribe dangerous drugs within the scope of practice of the person's profession;

~~41.~~ 42. "Prescription" means and includes any order for drug or medical supplies written or signed, or transmitted by word of mouth, telephone, or other means of communication:

a. by a licensed prescriber,

b. under the supervision of an Oklahoma licensed practitioner, an Oklahoma licensed ~~advanced practice registered nurse~~ Advanced Practice Registered Nurse, or an Oklahoma licensed physician assistant, or

c. by an Oklahoma licensed wholesaler or distributor as authorized in Section 353.29.1 of this title;

~~42.~~ 43. "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution. ~~"Product"~~ Product does not include blood components intended for transfusion, radioactive drugs or biologics and medical gas;

~~43.~~ 44. "Repackager", including "virtual repackager", means a person who owns or operates an establishment that repacks and relabels a product or package for further sale or distribution without further transaction;

~~44.~~ 45. "Sterile drug" means a drug that is intended for parenteral administration, an ophthalmic or oral inhalation drug in aqueous format, or a drug that is required to be sterile under state and federal law;

~~45.~~ 46. "Supervising physician" means an individual holding a current license to practice as a physician from the State Board of Medical Licensure and Supervision, pursuant to the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, or the State Board of Osteopathic Examiners, pursuant to the provisions of the Oklahoma Osteopathic Medicine Act, who supervises an ~~advanced practice registered nurse~~ Advanced Practice Registered Nurse as defined in Section 567.3a of this title, and who is not in training as an intern, resident, or fellow. To be eligible to supervise an ~~advanced practice registered nurse~~ Advanced Practice

Registered Nurse, such physician shall remain in compliance with the rules promulgated by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners;

~~46.~~ 47. "Supportive personnel" means technicians and auxiliary supportive persons who are regularly paid employees of a pharmacy who work and perform tasks in the pharmacy as authorized by Section 353.18A of this title;

~~47.~~ 48. "Third-party logistics provider" including "virtual third-party logistics provider" means an entity that provides or coordinates warehousing, or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of a product but does not take ownership of the product, nor have responsibility to direct the sale or disposition of the product. For the purposes of this paragraph, ~~"third-party logistics provider"~~ third-party logistics provider does not include shippers and the United States Postal Service;

~~48.~~ 49. "Wholesale distributor" including "virtual wholesale distributor" means a person other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or repackager engaged in wholesale distribution as defined by 21 U.S.C., Section 353(e)(4) as amended by the Drug Supply Chain Security Act;

~~49.~~ 50. "County jail" means a facility operated by a county for the physical detention and correction of persons charged with, or

convicted of, criminal offenses or ordinance violations or persons found guilty of civil or criminal contempt;

~~50.~~ 51. "State correctional facility" means a facility or institution that houses a prisoner population under the jurisdiction of the Department of Corrections;

~~51.~~ 52. "Unit dose package" means a package that contains a single dose drug with the name, strength, control number, and expiration date of that drug on the label; and

~~52.~~ 53. "Unit of issue package" means a package that provides multiple doses of the same drug, but each drug is individually separated and includes the name, lot number, and expiration date.

SECTION 3. AMENDATORY 59 O.S. 2021, Section 353.18A, is amended to read as follows:

Section 353.18A. A. Supportive personnel may perform certain tasks in the practice of pharmacy if such personnel perform the tasks in compliance with rules promulgated by the State Board of Pharmacy.

B. 1. No person shall serve as a pharmacy technician without first procuring a permit from the Board.

2. An application for an initial or renewal pharmacy technician permit issued pursuant to the provisions of this subsection shall be submitted to the Board and provide any other information deemed relevant by the Board.

3. An application for an initial or renewal permit shall be accompanied by a permit fee not to exceed ~~Seventy Five~~ Seventy-five Dollars ($75.00) for each period of one (1) year. A permit issued pursuant to this subsection shall be valid for a period to be determined by the Board.

4. Every permitted pharmacy technician who fails to complete a renewal form and remit the required renewal fee to the Board by the fifteenth day after the expiration of the permit shall pay a late fee to be fixed by the Board.

5. A pharmacy technician permit shall be ~~cancelled~~ canceled thirty (30) days after expiration.

6. A person may obtain reinstatement of a ~~cancelled~~ canceled pharmacy technician permit by making application, paying a reinstatement fee, and satisfactorily completing other requirements set by the Board.

C. A licensed pharmacy shall maintain a pharmacy technician-to-pharmacist ratio of not more than three pharmacy technicians for every one licensed pharmacist.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A contract between a pharmacy benefits manager and a provider shall not contain effective rates, terms, conditions, or

requirements that do not specifically reimburse providers the specified contract rate for each prescription claim.

B. Maximum allowable cost prices shall be no less than the current National Average Drug Acquisition Cost (NADAC) plus Thirteen Dollars ($13.00).

59-2-3856 DC 7/5/2024 11:41:06 PM