

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2671 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: David Derby _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2671

By: Derby

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending
9 63 O.S. 2011, Sections 2-309, as last amended by
10 Section 1, Chapter 323, O.S.L. 2013, 2-309B, 2-309C,
11 as last amended by Section 73, Chapter 15, O.S.L.
12 2013, 2-309D, as last amended by Section 5, Chapter
13 181, O.S.L. 2013, 2-309E, 2-309F, as amended by
14 Section 2, Chapter 340, O.S.L. 2013, 2-309G and 2-
15 309H (63 O.S. Supp. 2013, Sections 2-309, 2-309C, 2-
16 309D and 2-309F), which relate to the Anti-Drug
17 Diversion Act; requiring certain check in central
18 repository during certain time period; providing
19 exception; and providing an effective date.

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

21 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-309, as
22 last amended by Section 1, Chapter 323, O.S.L. 2013 (63 O.S. Supp.
23 2013, Section 2-309), is amended to read as follows:

24 Section 2-309. A. 1. Except for dosages medically required
for a period not to exceed forty-eight (48) hours which are
administered by or on direction of a practitioner, other than a
pharmacist, or medication dispensed directly by a practitioner,

1 other than a pharmacist, to an ultimate user, no controlled
2 dangerous substance included in Schedule II, which is a prescription
3 drug as determined under regulation promulgated by the Board of
4 Pharmacy, may be dispensed without the written prescription of a
5 practitioner; provided, that in emergency situations, as prescribed
6 by the Board of Pharmacy by regulation, such drug may be dispensed
7 upon oral prescription reduced promptly to writing and filed by the
8 pharmacist in a manner to be prescribed by rules and regulations of
9 the ~~Director of the Oklahoma State Bureau of Narcotics and Dangerous~~
10 ~~Drugs Control~~ State Board of Health.

11 2. Electronic prescribing may be utilized for Schedules II,
12 III, IV, and V, subject to the requirements set forth in 21 CFR,
13 Section 1311 et seq.

14 3. The transmission of written prescription by practitioner to
15 dispensing pharmacy by facsimile or electronic transmission with
16 electronic signature is permitted only under the following
17 conditions:

18 a. for Schedule II drugs, the original prescription must
19 be presented and verified against the facsimile at the
20 time the substances are actually dispensed, and the
21 original document must be properly annotated and
22 retained for filing, except:

23 (1) home infusion pharmacy may consider the facsimile
24 to be a "written prescription" as required by

1 Section 2-101 et seq. of this title and as
2 required by Title 21 U.S.C., Section 829(a). The
3 facsimile copy of the prescription shall be
4 retained as an original prescription, and it must
5 contain all the information required by Section
6 2-101 et seq. of this title and 21 CFR, Section
7 1306.05(a), including date issued, the patient's
8 full name and address, and the practitioner's
9 name, address, DEA registration number, and
10 signature. The exception to the regulations for
11 home infusion/IV therapy is intended to
12 facilitate the means by which home infusion
13 pharmacies obtain prescriptions for patients
14 requiring the frequently modified parenteral
15 controlled release administration of narcotic
16 substances, but does not extend to the dispensing
17 of oral dosage units of controlled substances,

18 (2) the same exception is granted to patients in Long
19 Term Care facilities (LTCF), which are filled by
20 and delivered to the facility by a dispensing
21 pharmacy, and

22 (3) an electronic prescription with electronic
23 signature may serve as an original prescription,
24

1 subject to the requirements set forth in 21 CFR,
2 Section 1311 et seq., and

3 b. for drugs in Schedules III and IV, a facsimile copy of
4 a written, signed prescription transmitted directly by
5 the prescribing practitioner to the pharmacy can serve
6 as an original prescription. Electronic prescribing
7 may be utilized for Schedules III and IV subject to
8 the same requirements as set forth in 21 CFR, Section
9 1311 et seq.

10 4. Prescriptions shall be retained in conformity with the
11 requirements of this section and Section 2-307 of this title. No
12 prescription for a Schedule II substance may be refilled.

13 B. 1. Except for dosages medically required for a period not
14 to exceed forty-eight (48) hours which are administered by or on
15 direction of a practitioner, other than a pharmacist, or medication
16 dispensed directly by a practitioner, other than a pharmacist, to an
17 ultimate user, no controlled dangerous substance included in
18 Schedule III or IV, which is a prescription drug as determined under
19 regulation promulgated by the Board of Pharmacy, may be dispensed
20 without a written or oral prescription.

21 2. A written or oral prescription for a controlled dangerous
22 substance in Schedule III or IV may not be filled or refilled more
23 than six (6) months after the date thereof or be refilled more than
24

1 five times after the date of the prescription, unless renewed by the
2 practitioner.

3 3. A written or oral prescription for any product containing
4 hydrocodone with another active ingredient shall not be refilled.

5 C. No controlled dangerous substance included in Schedule V may
6 be distributed or dispensed other than for a legitimate medical or
7 scientific purpose.

8 D. Except for dosages medically required for a period not to
9 exceed forty-eight (48) hours which are administered by or on
10 direction of a practitioner, other than a pharmacist, or medication
11 dispensed directly by a practitioner, other than a pharmacist, to an
12 ultimate user, tincture opium camphorated, commonly known as
13 paregoric, may not be dispensed without a written or oral
14 prescription. The refilling of a prescription for paregoric shall
15 be unlawful unless permission is granted by the prescriber, either
16 written or oral.

17 E. Whenever it appears to the ~~Director~~ State Commissioner of
18 Health that a drug not considered to be a prescription drug under
19 existing state law or regulation of the Board of Pharmacy should be
20 so considered because of its abuse potential, the ~~Director~~ State
21 Commissioner of Health shall so advise the Board of Pharmacy and
22 furnish to the Board all available data relevant thereto.

23 F. "Prescription", as used herein, means a written or oral
24 order by a practitioner to a pharmacist for a controlled dangerous

1 substance for a particular patient, which specifies the date of its
2 issue, and the full name and address of the patient; if the
3 controlled dangerous substance is prescribed for an animal, the
4 species of the animal; the name and quantity of the controlled
5 dangerous substance prescribed; the directions for use; the name and
6 address of the owner of the animal and, if written, the signature of
7 the practitioner.

8 G. No person shall solicit, dispense, receive or deliver any
9 controlled dangerous substance through the mail, unless the ultimate
10 user is personally known to the practitioner and circumstances
11 clearly indicate such method of delivery is in the best interest of
12 the health and welfare of the ultimate user.

13 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-309B, is
14 amended to read as follows:

15 Section 2-309B. For the purposes of the Anti-Drug Diversion
16 Act:

17 1. "Bureau" means the Oklahoma State Bureau of Narcotics and
18 Dangerous Drugs Control;

19 2. "Dispenser" means a person who distributes a Schedule II
20 controlled dangerous substance, but does not include a licensed
21 hospital pharmacy or a licensed nurse or medication aide who
22 administers such a substance at the direction of a licensed
23 physician;

24

1 3. "Dispenser's registration number" means the dispenser's
2 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
3 registration number or, in the case of a pharmacist, the National
4 Association of Boards of Pharmacy number for the pharmacy where the
5 dispensation is made;

6 4. "Exception report" means an output of data indicating
7 Schedule II controlled dangerous substance dispensation which is
8 outside expected norms for a prescriber practicing a particular
9 specialty or field of health care, for a dispenser doing business in
10 a particular location, or for a recipient;

11 5. "Recipient" means the person for whom a prescription is
12 prescribed and who is the lawful intended ultimate user;

13 6. "Recipient's agent" means a person who is authorized by the
14 ultimate user to pick up the recipient's medication and deliver it
15 to the recipient or a person who claims a prescription other than
16 the person to whom the medication is prescribed;

17 7. "Recipient's identification number" and "recipient's agent's
18 identification number" means the unique number contained on a valid
19 passport, military identification card, driver license, or
20 identification card issued to a recipient pursuant to Section 6-105
21 of Title 47 of the Oklahoma Statutes or similar statute of another
22 state if the recipient is not a resident of the State of Oklahoma,
23 or, if the recipient is less than eighteen (18) years old and has no
24 such identification, the unique number contained on a valid

1 passport, military identification card, driver license, or
2 identification card issued to the recipient's parent or guardian
3 pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes or
4 similar statute of another state if the parent or guardian is not a
5 resident of the State of Oklahoma, or, if the controlled dangerous
6 substance is obtained for an animal, the unique number contained on
7 the animal owner's valid driver license or identification card
8 issued pursuant to Section 6-105 of Title 47 of the Oklahoma
9 Statutes or similar statute of another state if the owner is not a
10 resident of the State of Oklahoma. Nonresident drug outlets
11 registered pursuant to the Oklahoma Pharmacy Act and resident drug
12 outlets defined in Section 353.1 of Title 59 of the Oklahoma
13 Statutes are exempt from the picture identification requirement if
14 the nonresident and resident drug outlets have obtained the
15 identification of the patient through the prescription benefit plan
16 of the patient;

17 8. "Registrant" means a person, persons, corporation or other
18 entity who has been issued by the ~~Director of the Oklahoma State~~
19 ~~Bureau of Narcotics and Dangerous Drugs Control~~ State Commissioner
20 of Health a registration pursuant to Section 2-302 of this title;
21 and

22 9. "State" means any state, territory, or possession of the
23 United States, the District of Columbia, or foreign nation.

24

1 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2-309C, as
2 last amended by Section 73, Chapter 15, O.S.L. 2013 (63 O.S. Supp.
3 2013, Section 2-309C), is amended to read as follows:

4 Section 2-309C. A. A dispenser of a Schedule II, III, IV or V
5 controlled dangerous substance dispensed pursuant to a valid
6 prescription shall transmit to a central repository designated by
7 ~~the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control~~
8 State Commissioner of Health using the American Society for
9 Automation in Pharmacy's (ASAP) Telecommunications Format for
10 Controlled Substances version designated in rules by the Oklahoma
11 State Bureau of Narcotics and Dangerous Drugs Control, the following
12 information for each dispensation:

- 13 1. Recipient's and recipient's agent's name;
- 14 2. Recipient's and recipient's agent's address;
- 15 3. Recipient's and recipient's agent's date of birth;
- 16 4. Recipient's and recipient's agent's identification number;
- 17 5. National Drug Code number of the substance dispensed;
- 18 6. Date of the dispensation;
- 19 7. Quantity of the substance dispensed;
- 20 8. Prescriber's United States Drug Enforcement Agency
21 registration number;
- 22 9. Dispenser's registration number; and
- 23 10. Other information as required by administrative rule.

24

1 B. The information required by this section shall be
2 transmitted:

3 1. In a format or other media designated acceptable by the
4 ~~Oklahoma State Bureau of Narcotics and Dangerous Drugs Control~~ State
5 Commissioner of Health; and

6 2. Within twenty-four (24) hours of the time that the substance
7 is dispensed. Beginning January 1, 2012, all information shall be
8 submitted on a real-time log.

9 C. When a prescription is written or dispensed to a resident of
10 a nursing home or a person who is under the care of a hospice
11 program licensed pursuant to the provisions of the Oklahoma Hospice
12 Licensing Act who does not have an identification card issued by the
13 state or another form of a recipient identification number pursuant
14 to Section 2-309B of this title, a Social Security number may be
15 used for the purpose of complying with the reporting requirements
16 provided for in this section.

17 D. Willful failure to transmit accurate information as required
18 by this section shall be a misdemeanor punishable, upon conviction,
19 by not more than one (1) year in the county jail, or by a fine of
20 not more than One Thousand Dollars (\$1,000.00), or by both such
21 imprisonment and fine, or administrative action may be taken
22 pursuant to Section 2-304 of this title.

23 E. The ~~Director of the Bureau~~ State Commissioner of Health
24 shall have the authority to allow paper submissions on a form

1 designated by the ~~Oklahoma State Bureau of Narcotics and Dangerous~~
2 ~~Drugs Control~~ State Board of Health, if the dispenser has an
3 appropriate hardship.

4 SECTION 4. AMENDATORY 63 O.S. 2011, Section 2-309D, as
5 last amended by Section 5, Chapter 181, O.S.L. 2013 (63 O.S. Supp.
6 2013, Section 2-309D), is amended to read as follows:

7 Section 2-309D. A. The information collected at the central
8 repository pursuant to the Anti-Drug Diversion Act shall be
9 confidential and shall not be open to the public. Access to the
10 information shall be limited to:

11 1. Peace officers certified pursuant to Section 3311 of Title
12 70 of the Oklahoma Statutes who are employed as investigative agents
13 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
14 Control;

15 2. The United States Drug Enforcement Administration Diversion
16 Group Supervisor;

17 3. The executive director or chief investigator, as designated
18 by each board, of the following state boards:

- 19 a. Board of Podiatric Medical Examiners,
20 b. Board of Dentistry,
21 c. State Board of Pharmacy,
22 d. State Board of Medical Licensure and Supervision,
23 e. State Board of Osteopathic Examiners,
24 f. State Board of Veterinary Medical Examiners, and

1 g. Oklahoma Health Care Authority;

2 provided, however, that the executive director or chief investigator
3 of each of these boards shall be limited to access to information
4 relevant to licensees of the employing board of such executive
5 director or chief investigator; and

6 4. A multicounty grand jury properly convened pursuant to the
7 Multicounty Grand Jury Act.

8 B. This section shall not prevent access, at the discretion of
9 the ~~Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs~~
10 ~~Control~~ State Commissioner of Health, to investigative information
11 by peace officers and investigative agents of federal, state, county
12 or municipal law enforcement agencies, district attorneys and the
13 Attorney General in furtherance of criminal investigations or
14 prosecutions within their respective jurisdictions, and to
15 registrants in furtherance of efforts to guard against the diversion
16 of controlled dangerous substances.

17 C. This section shall not prevent the disclosure, at the
18 discretion of the ~~Director of the Oklahoma State Bureau of Narcotics~~
19 ~~and Dangerous Drugs Control~~ State Commissioner of Health, of
20 statistical information gathered from the central repository to the
21 general public which shall be limited to types and quantities of
22 controlled substances dispensed and the county where dispensed.

23 D. Any unauthorized disclosure of any information collected at
24 the central repository provided by the Anti-Drug Diversion Act shall

1 be a misdemeanor. Violation of the provisions of this section shall
2 be deemed willful neglect of duty and shall be grounds for removal
3 from office.

4 E. Notwithstanding the provisions of subsection B of this
5 section, beginning on June 1, 2016, registrants shall ~~have no~~
6 ~~requirement or obligation~~ be required to access or check the
7 information in the central repository prior to dispensing or
8 administering medications ~~or~~ upon the initial prescription as part
9 of their professional practices. The checks made pursuant to this
10 section may be made by the physician or by a member of the
11 physician's medical or office staff. Such requirement shall
12 terminate on June 1, 2021, unless reauthorized by the Legislature.
13 The provisions of this subsection shall not apply to medications
14 dispensed, prescribed or administered to a patient or resident in a
15 nursing home, in a perioperative or periobstetrical setting, or as
16 part of the course of treatment for an outpatient procedure.
17 Registrants shall not be liable to any person for any claim of
18 damages as a result of accessing or failing to access the
19 information in the central repository and no lawsuit may be
20 predicated thereon. Nothing herein shall be construed to relieve a
21 registrant from any duty to monitor and report the sales of certain
22 products pursuant to subsection ~~E~~ D of Section 2-309C of this title.

23 F. Information regarding nonfatal overdoses, other than
24 statistical information as required by Section 2-106 of this title,

1 shall be completely confidential. Access to this information shall
2 be strictly limited to the State Department of Health, Director of
3 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
4 or designee, the Chief Medical Examiner, and the registrant that
5 enters the information. Registrants shall not be liable to any
6 person for a claim of damages for information reported pursuant to
7 the provisions of Section 2-105 of this title.

8 SECTION 5. AMENDATORY 63 O.S. 2011, Section 2-309E, is
9 amended to read as follows:

10 Section 2-309E. A. All access to information in the central
11 repository shall be controlled by and made through the ~~Oklahoma~~
12 ~~State Bureau of Narcotics and Dangerous Drugs Control~~ State
13 Commissioner of Health.

14 B. For the purposes of court proceedings, the ~~Director of the~~
15 ~~Bureau~~ State Commissioner of Health, or designee, shall be the
16 designated keeper of the records.

17 SECTION 6. AMENDATORY 63 O.S. 2011, Section 2-309F, as
18 amended by Section 2, Chapter 340, O.S.L. 2013 (63 O.S. Supp. 2013,
19 Section 2-309F), is amended to read as follows:

20 Section 2-309F. A. The central repository provided by the
21 Anti-Drug Diversion Act shall:

22 1. Be capable of providing the collected information in forms
23 required by the ~~Oklahoma State Bureau of Narcotics and Dangerous~~
24 ~~Drugs Control~~ State Board of Health, including but not limited to,

1 dispensations by prescriber name or registration number, dispenser
2 name or registration number, recipient name or identification
3 number, type of substance, frequency, quantity, and location of
4 dispensation;

5 2. Provide the ~~Bureau~~ State Board of Health with continual,
6 twenty-four-hour per day, on-line access to the collected
7 information;

8 3. Secure the collected information against access by
9 unauthorized persons;

10 4. Provide the Bureau, in a reasonable time, with all collected
11 information in a format readily usable by the Bureau, in the event
12 the relationship between the state and central repository is
13 terminated; and

14 5. Not withhold access to the collected information for any
15 reason other than failure of the Bureau to timely pay agreed fees
16 and charges for use of the central repository.

17 B. The ~~Bureau~~ State Commissioner of Health is authorized to
18 enter into a contract with a vendor to serve as the central
19 repository provided for in the Anti-Drug Diversion Act or to
20 purchase the necessary equipment to create the central repository
21 within the ~~Bureau~~ State Department of Health. The ~~Bureau~~ State
22 Commissioner of Health is authorized to enter into agreements and
23 contracts with vendors as necessary to facilitate the electronic
24 transmission of data contained within the central repository to

1 registrants and other persons as provided for in Section 2-309D of
2 this title. The central repository shall not be subject to the
3 provisions of Sections 34.6 through 34.33 of Title 62 of the
4 Oklahoma Statutes and shall be maintained and controlled by
5 personnel of the ~~Bureau~~ State Department of Health pursuant to the
6 confidentiality requirements provided for in Section 2-309D of this
7 title.

8 C. From funds appropriated by the State Department of Health,
9 each physician shall receive payment from the State Department of
10 Health, quarterly, by electronic transfer or United States Postal
11 Service, an amount equal to fifty cents (\$.50) for each time such
12 physician accesses the central repository.

13 SECTION 7. AMENDATORY 63 O.S. 2011, Section 2-309G, is
14 amended to read as follows:

15 Section 2-309G. The ~~Oklahoma Bureau of Narcotics and Dangerous~~
16 ~~Drugs Control~~ State Board of Health shall develop criteria for the
17 production of exception reports out of the information collected at
18 the central repository. In developing these criteria, the Bureau
19 shall seek the counsel of the following entities:

- 20 1. Board of Podiatric Medical Examiners;
- 21 2. Board of Dentistry;
- 22 3. Board of Pharmacy;
- 23 4. State Board of Medical Licensure and Supervision;
- 24 5. State Board of Osteopathic Examiners;

- 1 6. State Board of Veterinary Medical Examiners;
- 2 7. Oklahoma Podiatric Medical Association;
- 3 8. Oklahoma Dental Association;
- 4 9. Oklahoma Pharmaceutical Association;
- 5 10. Oklahoma State Medical Association;
- 6 11. Oklahoma Osteopathic Association; and
- 7 12. Oklahoma Veterinary Medical Association.

8 SECTION 8. AMENDATORY 63 O.S. 2011, Section 2-309H, is
9 amended to read as follows:

10 Section 2-309H. ~~The Director of the Oklahoma Bureau of~~
11 ~~Narcotics and Dangerous Drugs Control~~ State Board of Health shall
12 promulgate and adopt rules to implement and enforce the Anti-Drug
13 Diversion Act.

14 SECTION 9. This act shall become effective November 1, 2014.

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