

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 2773

By: Derby of the House

and

David of the Senate

7  
8  
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to pharmacies; amending 59 O.S. 2011,  
11 Section 353.24, as amended by Section 5 of Enrolled  
12 Senate Bill No. 1150 of the 2nd Session of the 55th  
13 Oklahoma Legislature, which relates to the Oklahoma  
14 Pharmacy Act; authorizing prescription delivery to  
15 certain facilities; directing the Board of Pharmacy  
16 to promulgate rules; amending Section 6, Chapter 154,  
17 O.S.L. 2014 (63 O.S. Supp. 2015, Section 2-312.2),  
18 which relates to the sale or dispensation of  
19 naloxone; authorizing pharmacist to prescribe and  
20 dispense naloxone; providing that no dispensing  
21 protocol shall be required; amending Section 1,  
22 Chapter 263, O.S.L. 2014 (59 O.S. Supp. 2015, Section  
23 357), as amended by Section 7 of Enrolled Senate Bill  
24 No. 1150 of the 2nd Session of the 55th Oklahoma  
Legislature, which relates to pharmacy benefit plans;  
clarifying language; authorizing pharmacists to  
exercise professional judgment in dispensing refill  
medications in certain circumstances; excluding  
certain medications; providing quantity limitations;  
providing for codification; and providing an  
effective date.

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

1 SECTION 1. AMENDATORY 59 O.S. 2011, Section 353.24, as  
2 amended by Section 5 of Enrolled Senate Bill No. 1150 of the 2nd  
3 Session of the 55th Oklahoma Legislature, is amended to read as  
4 follows:

5 Section 353.24 A. It shall be unlawful for any licensee or  
6 other person to:

7 1. Forge or increase the quantity of drug in any prescription,  
8 or to present a prescription bearing forged, fictitious or altered  
9 information or to possess any drug secured by such forged,  
10 fictitious or altered prescription;

11 2. Sell, offer for sale, barter or give away any unused  
12 quantity of drugs obtained by prescription, except through a program  
13 pursuant to the Utilization of Unused Prescription Medications Act  
14 or as otherwise provided by the State Board of Pharmacy;

15 3. Sell, offer for sale, barter or give away any drugs damaged  
16 by fire, water, or other causes without first obtaining the written  
17 approval of the Board or the State Department of Health;

18 4. No person, firm or business establishment shall offer to the  
19 public, in any manner, their services as a "pick-up station" or  
20 intermediary for the purpose of having prescriptions filled or  
21 delivered, whether for profit or gratuitously. Nor may the owner of  
22 any pharmacy or drug store authorize any person, firm or business  
23 establishment to act for them in this manner with these exceptions:  
24

- 1 a. patient-specific filled prescriptions may be delivered  
2 or shipped to a prescriber's clinic for pick-up by  
3 those patients ~~who~~ whom the prescriber has  
4 individually determined and documented do not have a  
5 permanent or secure mailing address,
- 6 b. patient-specific filled prescriptions for drugs which  
7 require special handling written by a prescriber may  
8 be delivered or shipped to the prescriber's clinic for  
9 administration or pick-up at the prescriber's office,
- 10 c. patient-specific filled prescriptions, including  
11 sterile compounded drugs, may be delivered or shipped  
12 to a prescriber's clinic where they shall be  
13 administered,
- 14 d. patient-specific filled prescriptions for patients  
15 under Medicare and/or Medicaid for End Stage Renal  
16 Disease (ESRD) may be delivered or shipped to a  
17 prescriber's clinic for administration or final  
18 delivery to the patient, or
- 19 e. patient-specific filled prescriptions for  
20 radiopharmaceuticals may be delivered or shipped to a  
21 prescriber's clinic for administration or pick-up.

22 However, nothing in this paragraph shall prevent a pharmacist or  
23 an employee of the pharmacy from personally receiving a prescription  
24 or delivering a legally filled prescription to a residence, office

1 or place of employment of the patient for whom the prescription was  
2 written or a facility where medical care or pharmacy services are  
3 received by the patient. The Board of Pharmacy shall promulgate  
4 rules requiring a facility where medical care or pharmacy services  
5 are received maintain records of any prescriptions delivered to the  
6 facility. Provided further, the provisions of this paragraph shall  
7 not apply to any Department of Mental Health and Substance Abuse  
8 Services employee or any person whose facility contracts with the  
9 Department of Mental Health and ~~Substances~~ Substance Abuse Services  
10 whose possession of any dangerous drug, as defined in Section 353.1  
11 of this title, is for the purpose of delivery of a mental health  
12 consumer's medicine to the consumer's home or residence. Nothing in  
13 this paragraph shall prevent veterinary prescription drugs from  
14 being shipped directly from an Oklahoma licensed wholesaler or  
15 distributor registered with the Oklahoma Board of Veterinary Medical  
16 Examiners to a client; provided, such drugs may be dispensed only on  
17 prescription of a licensed veterinarian and only when an existing  
18 veterinary-client-patient relationship exists;

19 5. Sell, offer for sale or barter or buy any professional  
20 samples except through a program pursuant to the Utilization of  
21 Unused Prescription Medications Act;

22 6. Refuse to permit or otherwise prevent members of the Board  
23 or such representatives thereof from entering and inspecting any and  
24 all places, including premises, vehicles, equipment, contents, and

1 records, where drugs, medicine, chemicals or poisons are stored,  
2 sold, vended, given away, compounded, dispensed, repackaged,  
3 transported, or manufactured;

4 7. Interfere, refuse to participate in, impede or otherwise  
5 obstruct any inspection, investigation or disciplinary proceeding  
6 authorized by the Oklahoma Pharmacy Act;

7 8. Possess dangerous drugs without a valid prescription or a  
8 valid license to possess such drugs; provided, however, this  
9 provision shall not apply to any Department of Mental Health and  
10 Substance Abuse Services employee or any person whose facility  
11 contracts with the Department of Mental Health and Substances Abuse  
12 Services whose possession of any dangerous drug, as defined in  
13 Section 353.1 of this title, is for the purpose of delivery of a  
14 mental health consumer's medicine to the consumer's home or  
15 residence;

16 9. Fail to establish and maintain effective controls against  
17 the diversion of drugs for any other purpose than legitimate  
18 medical, scientific or industrial uses as provided by state, federal  
19 and local law;

20 10. Fail to have a written drug diversion detection and  
21 prevention policy;

22 11. Possess, sell, offer for sale, barter or give away any  
23 quantity of dangerous drugs not listed as a scheduled drug pursuant  
24 to Sections 2-201 through 2-212 of Title 63 of the Oklahoma Statutes

1 when obtained by prescription bearing forged, fictitious or altered  
2 information.

3 a. A first violation of this section shall constitute a  
4 misdemeanor and upon conviction shall be punishable by  
5 imprisonment in the county jail for a term not more  
6 than one (1) year and a fine in an amount not more  
7 than One Thousand Dollars (\$1,000.00).

8 b. A second violation of this section shall constitute a  
9 felony and upon conviction shall be punishable by  
10 imprisonment in the Department of Corrections for a  
11 term not exceeding five (5) years and a fine in an  
12 amount not more than Two Thousand Dollars (\$2,000.00);

13 12. Violate a Board order or agreed order;

14 13. Compromise the security of licensure examination materials;

15 or

16 14. Fail to notify the Board, in writing, within ten (10) days  
17 of a licensee or permit holder's address change.

18 B. 1. It shall be unlawful for any person other than a  
19 licensed pharmacist or physician to certify a prescription before  
20 delivery to the patient or the patient's representative or  
21 caregiver.

22 2. It shall be unlawful for any person to institute or manage a  
23 pharmacy unless such person is a licensed pharmacist or has placed a  
24 licensed pharmacist in charge of such pharmacy.

1 3. No licensed pharmacist shall manage, supervise or be in  
2 charge of more than one pharmacy.

3 4. No pharmacist being requested to sell, furnish or compound  
4 any drug, medicine, chemical or other pharmaceutical preparation, by  
5 prescription or otherwise, shall substitute or cause to be  
6 substituted for it, without authority of the prescriber or  
7 purchaser, any like drug, medicine, chemical or pharmaceutical  
8 preparation.

9 5. No pharmacy, pharmacist-in-charge or other person shall  
10 permit the practice of pharmacy except by a licensed pharmacist or  
11 assistant pharmacist.

12 6. No person shall subvert the authority of the pharmacist-in-  
13 charge of the pharmacy by impeding the management of the  
14 prescription department to act in compliance with federal and state  
15 law.

16 C. 1. It shall be unlawful for a pharmacy to resell dangerous  
17 drugs to any wholesale distributor.

18 2. It shall be unlawful for a wholesale distributor to purchase  
19 drugs from a pharmacy.

20 SECTION 2. AMENDATORY Section 6, Chapter 154, O.S.L.  
21 2014 (63 O.S. Supp. 2015, Section 2-312.2), is amended to read as  
22 follows:

23 Section 2-312.2 Naloxone, also known as Narcan, or any of its  
24 generic equivalents may be dispensed or sold by a pharmacy without a

1 prescription; provided, however, it shall be dispensed or sold only  
2 by, or under the supervision of, a licensed pharmacist. Naloxone  
3 may be prescribed and dispensed by a licensed pharmacist; provided,  
4 however, it shall be dispensed only by, or under the supervision of,  
5 a licensed pharmacist. No dispensing protocol shall be required.

6 SECTION 3. AMENDATORY Section 1, Chapter 263, O.S.L.  
7 2014 (59 O.S. Supp. 2015, Section 357), as amended by Section 7 of  
8 Enrolled Senate Bill No. 1150 of the 2nd Session of the 55th  
9 Oklahoma Legislature, is amended to read as follows:

10 Section 357. As used in this act:

11 1. "Covered entity" means a nonprofit hospital or medical  
12 service organization, insurer, health coverage plan or health  
13 maintenance organization; a health program administered by the state  
14 in the capacity of provider of health coverage; or an employer,  
15 labor union, or other entity organized in the state that provides  
16 health coverage to covered individuals who are employed or reside in  
17 the state. This term does not include a health plan that provides  
18 coverage only for accidental injury, specified disease, hospital  
19 indemnity, disability income, or other limited benefit health  
20 insurance policies and contracts that do not include prescription  
21 drug coverage;

22 2. "Covered individual" means a member, participant, enrollee,  
23 contract holder or policy holder or beneficiary of a covered entity  
24 who is provided health coverage by the covered entity. A covered

1 individual includes any dependent or other person provided health  
2 coverage through a policy, contract or plan for a covered  
3 individual;

4 3. "Department" means the Oklahoma Insurance Department;

5 4. "Maximum allowable cost" or "MAC" means the list of drug  
6 products delineating the maximum per-unit reimbursement for  
7 ~~multiple-source~~ multisource prescription drugs, medical product or  
8 device;

9 5. "Multisource drug product reimbursement" ~~(reimbursement)~~ or  
10 "reimbursement" means the total amount paid to a pharmacy for  
11 multisource drug products inclusive of any reduction in payment to  
12 the pharmacy, excluding prescription dispense fees;

13 6. "Pharmacy benefits management" means a service provided to  
14 covered entities to facilitate the provision of prescription drug  
15 benefits to covered individuals within the state, including  
16 negotiating pricing and other terms with drug manufacturers and  
17 providers. Pharmacy benefits management may include any or all of  
18 the following services:

- 19 a. claims processing, retail network management and  
20 payment of claims to pharmacies for prescription drugs  
21 dispensed to covered individuals,
- 22 b. clinical formulary development and management  
23 services,
- 24 c. rebate contracting and administration,

- 1           d.    certain patient compliance, therapeutic intervention  
2                    and generic substitution programs, or  
3           e.    disease management programs;

4           7.    "Pharmacy benefits manager" or "PBM" means a person,  
5 business or other entity that performs pharmacy benefits management.  
6 The term includes a person or entity acting for a PBM in a  
7 contractual or employment relationship in the performance of  
8 pharmacy benefits management for a managed care company, nonprofit  
9 hospital, medical service organization, insurance company, third-  
10 party payor, or a health program administered by an agency of this  
11 state;

12           8.    "Plan sponsor" means the employers, insurance companies,  
13 unions and health maintenance organizations or any other entity  
14 responsible for establishing, maintaining, or administering a health  
15 benefit plan on behalf of covered individuals; and

16           9.    "Provider" means a pharmacy licensed by the State Board of  
17 Pharmacy, or an agent or representative of a pharmacy, including,  
18 but not limited to, the pharmacy's contracting agent, which  
19 dispenses prescription drugs or devices to covered individuals.

20           SECTION 4.       NEW LAW       A new section of law to be codified  
21 in the Oklahoma Statutes as Section 353.20.2 of Title 59, unless  
22 there is created a duplication in numbering, reads as follows:

23           A.    Unless the prescriber has specified on the prescription that  
24 dispensing a prescription for a maintenance medication in an initial

1 amount followed by periodic refills is medically necessary, a  
2 pharmacist may exercise his or her professional judgment to dispense  
3 varying quantities of medication per fill up to the total number of  
4 dosage units as authorized by the prescriber on the original  
5 prescription including any refills.

6 B. Subsection A of this section shall not apply to scheduled  
7 medications or any medications for which a report is required under  
8 the controlled substance database. Dispensing of medication based  
9 on refills authorized by the physician on the prescription shall be  
10 limited to no more than a ninety-day supply of the medication.

11 SECTION 5. This act shall become effective November 1, 2016.

12

13 55-2-10127 AMM 05/24/16

14

15

16

17

18

19

20

21

22

23

24