

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2039 _____
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

Amendment submitted by: Kevin Wallace

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 2039

By: McCall

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to pharmacies; amending 59 O.S. 2011, Section 353.24, as last amended by Section 5, Chapter 285, O.S.L. 2016 (59 O.S. Supp. 2016, Section 353.24), which relates to the Oklahoma Pharmacy Act; authorizing prescription delivery to certain facilities; directing the Board of Pharmacy to promulgate rules; amending Section 1, Chapter 263, O.S.L. 2014, as amended by Section 7, Chapter 285, O.S.L. 2016 (59 O.S. Supp. 2016, Section 357), which relates to pharmacy benefit plans; modifying definitions; amending Section 6, Chapter 154, O.S.L. 2014 (63 O.S. Supp. 2016, Section 2-312.2), which relates to the sale or dispensation of naloxone; authorizing pharmacist to prescribe and dispense naloxone; providing that no dispensing protocol shall be required; 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 last amended by Section 5, Chapter 285, O.S.L. 2016 (59 O.S. Supp.
3 2016, Section 353.24), is amended to read as follows:

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

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

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

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

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

23 a. patient-specific filled prescriptions may be delivered
24 or shipped to a prescriber's clinic for pick-up by

1 those patients ~~who~~ whom the prescriber has
2 individually determined and documented do not have a
3 permanent or secure mailing address,

4 b. patient-specific filled prescriptions for drugs which
5 require special handling written by a prescriber may
6 be delivered or shipped to the prescriber's clinic for
7 administration or pick-up at the prescriber's office,

8 c. patient-specific filled prescriptions, including
9 sterile compounded drugs, may be delivered or shipped
10 to a prescriber's clinic where they shall be
11 administered,

12 d. patient-specific filled prescriptions for patients
13 under Medicare and/or Medicaid for End Stage Renal
14 Disease (ESRD) may be delivered or shipped to a
15 prescriber's clinic for administration or final
16 delivery to the patient, or

17 e. patient-specific filled prescriptions for
18 radiopharmaceuticals may be delivered or shipped to a
19 prescriber's clinic for administration or pick-up.

20 However, nothing in this paragraph shall prevent a pharmacist or
21 an employee of the pharmacy from personally receiving a prescription
22 or delivering a legally filled prescription to a residence, office
23 or place of employment of the patient for whom the prescription was
24 written or a facility where medical care or pharmacy services are

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

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

20 6. Refuse to permit or otherwise prevent members of the Board
21 or such representatives thereof from entering and inspecting any and
22 all places, including premises, vehicles, equipment, contents, and
23 records, where drugs, medicine, chemicals or poisons are stored,
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1 sold, vended, given away, compounded, dispensed, repackaged,
2 transported, or manufactured;

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

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

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

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

21 11. Possess, sell, offer for sale, barter or give away any
22 quantity of dangerous drugs not listed as a scheduled drug pursuant
23 to Sections 2-201 through 2-212 of Title 63 of the Oklahoma Statutes
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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 1, Chapter 263, O.S.L.
21 2014, as amended by Section 7, Chapter 285, O.S.L. 2016 (59 O.S.
22 Supp. 2016, Section 357), is amended to read as follows:

23 Section 357. As used in this act:
24

1 1. "Covered entity" means a nonprofit hospital or medical
2 service organization, insurer, health coverage plan or health
3 maintenance organization; a health program administered by the state
4 in the capacity of provider of health coverage; or an employer,
5 labor union, or other entity organized in the state that provides
6 health coverage to covered individuals who are employed or reside in
7 the state. This term does not include a health plan that provides
8 coverage only for accidental injury, specified disease, hospital
9 indemnity, disability income, or other limited benefit health
10 insurance policies and contracts that do not include prescription
11 drug coverage;

12 2. "Covered individual" means a member, participant, enrollee,
13 contract holder or policy holder or beneficiary of a covered entity
14 who is provided health coverage by the covered entity. A covered
15 individual includes any dependent or other person provided health
16 coverage through a policy, contract or plan for a covered
17 individual;

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

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

23 5. "Multisource drug product reimbursement" ~~(reimbursement)~~ or
24 "reimbursement" means the total amount paid to a pharmacy for

1 multisource drug products inclusive of any reduction in payment to
2 the pharmacy, excluding prescription dispense fees;

3 6. "Pharmacy benefits management" means a service provided to
4 covered entities to facilitate the provision of prescription drug
5 benefits to covered individuals within the state, including
6 negotiating pricing and other terms with drug manufacturers and
7 providers. Pharmacy benefits management may include any or all of
8 the following services:

- 9 a. claims processing, retail network management and
10 payment of claims to pharmacies for prescription drugs
11 dispensed to covered individuals,
- 12 b. clinical formulary development and management
13 services,
- 14 c. rebate contracting and administration,
- 15 d. certain patient compliance, therapeutic intervention
16 and generic substitution programs, or
- 17 e. disease management programs;

18 7. "Pharmacy benefits manager" or "PBM" means a person,
19 business or other entity that performs pharmacy benefits management.
20 The term includes a person or entity acting for a PBM in a
21 contractual or employment relationship in the performance of
22 pharmacy benefits management for a managed care company, nonprofit
23 hospital, medical service organization, insurance company, third-

1 party payor, or a health program administered by an agency of this
2 state;

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

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

11 SECTION 3. AMENDATORY Section 6, Chapter 154, O.S.L.
12 2014 (63 O.S. Supp. 2016, Section 2-312.2), is amended to read as
13 follows:

14 Section 2-312.2 Naloxone, also known as Narcan, or any of its
15 generic equivalents may be dispensed or sold by a pharmacy without a
16 prescription; provided, however, it shall be dispensed or sold only
17 by, or under the supervision of, a licensed pharmacist. Naloxone
18 may be prescribed and dispensed by a licensed pharmacist; provided,
19 however, it shall be dispensed only by, or under the supervision of,
20 a licensed pharmacist. No dispensing protocol shall be required.

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

1 A. Unless the prescriber has specified on the prescription that
2 dispensing a prescription for a maintenance medication in an initial
3 amount followed by periodic refills is medically necessary, a
4 pharmacist may exercise his or her professional judgment to dispense
5 varying quantities of medication per fill up to the total number of
6 dosage units as authorized by the prescriber on the original
7 prescription including any refills.

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

13 SECTION 5. This act shall become effective November 1, 2017.

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