ENGROSSED HOUSE
BILL NO. 3766

By: Marti and Davis of the House

and

Weaver of the Senate

An Act relating to public health and safety; amending 63 O.S. 2011, Section 2-309, as last amended by Section 1, Chapter 255, O.S.L. 2018 (63 O.S. Supp. 2019, Section 2-309), which relates to the Uniform Controlled Dangerous Substances Act; exempting certain practitioners from electronic prescription requirements for controlled dangerous substances; allowing for the utilization of electronic prescriptions under certain circumstances; modifying internal statutory references; requiring practitioners to register with certain agency in order to purchase prescription forms; removing fee exemption and time period for valid registrations; directing practitioners to purchase prescription forms from list of approved vendors; allowing certain content to be included on prescription forms; expanding definition to allow for the inclusion of certain information on electronic prescriptions; clarifying authority of licensed practitioners to purchase prescription forms; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-309, as last amended by Section 1, Chapter 255, O.S.L. 2018 (63 O.S. Supp. 2019, Section 2-309), is amended to read as follows:

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

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

3. An electronic prescription with electronic signature may serve as an original prescription, subject to the requirements set forth in 21 CFR, Section 1311 et seq.

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

5. The electronic prescription requirement provided for in this section shall not apply to prescriptions for controlled dangerous substances issued by any of the following:

a. a person licensed to practice veterinary medicine,

b. a practitioner who experiences temporary technological or electrical failure or other extenuating circumstance that prevents the prescription from being transmitted electronically; provided, however, that the practitioner documents the reason for this exception in the medical record of the patient,

c. a practitioner, other than a pharmacist, who dispenses directly to an ultimate user,

d. a practitioner who orders a controlled dangerous substance to be administered through an on-site pharmacy in:

(1) a hospital as defined in Section 1-701 of this title,

(2) a nursing facility as defined in Section 1-1902 of this title,

(3) a hospice inpatient facility as defined in Section 1-860.2 of this title,

(4) an outpatient dialysis facility,

(5) a continuum of care facility as defined in Section 1-890.2 of this title, or

(6) a penal institution listed in Section 509 of Title 57 of the Oklahoma Statutes,

e. a practitioner who writes a prescription to be dispensed by a pharmacy located on federal property, provided the practitioner documents the reason for this exception in the medical record of the patient, ~~or~~

f. a practitioner that has received a waiver or extension from his or her licensing board,

g. a practitioner who prescribes a controlled dangerous substance for a supply that when taken as prescribed would be consumed within seventy-two (72) hours, or

h. a practitioner who determines that an electronic prescription cannot be issued in a timely manner and the condition of the patient is at risk.

6. Electronic prescriptions ~~shall not~~ may be utilized under the following circumstances:

a. ~~compound~~ compounded prescriptions ~~containing two or more commercially available products or two or more active pharmaceutical ingredients~~,

b. compounded infusion prescriptions ~~containing two or more commercially available products or two or more active pharmaceutical ingredients~~, or

c. prescriptions issued under approved research protocols~~, or~~

~~d. if the practitioner determines that an electronic prescription cannot be issued in a timely manner and the condition of the patient is at risk~~.

7. A pharmacist who receives a written, oral or facsimile prescription shall not be required to verify that the prescription falls under one of the exceptions provided for in paragraph 6 of this subsection. Pharmacists may continue to dispense medications from otherwise valid written, oral or facsimile prescriptions that are consistent with the provisions of this act.

8. Practitioners shall indicate in the health record of a patient that an exception to the electronic prescription requirement was utilized.

9. All prescriptions issued pursuant to ~~paragraphs~~ paragraph 5 and subparagraph c of paragraph 6 of this subsection shall be issued on an official prescription form ~~provided~~ approved by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

10. a. ~~Effective January 1, 2020, practitioners~~ Practitioners shall ~~register~~ be registered with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in order to be issued official prescription forms. Such registration shall include, but not be limited to, the primary address and the address of each place of

business to be imprinted on official prescription forms. Any change to a registered practitioner's registered address shall be promptly reported to the practitioner's licensing board and the Bureau by the practitioner in a manner approved by the Bureau.

b. ~~A practitioner's registration shall be without fee and subject to approval by the Bureau. Such registration shall be valid for a period of two (2) years and may be denied, suspended or revoked by the Bureau upon a finding by the Bureau or licensing board that the registered practitioner has had any license to practice a medical profession revoked or suspended by any state or federal agency.~~

~~c.~~ Where the Bureau has revoked the registration of a registered practitioner, the Bureau may revoke or cancel any official prescription forms in the possession of the registered practitioner. Any revocation or any suspension shall require the registered practitioner to return all unused official prescription forms to the Bureau within fifteen (15) calendar days after the date of the written notification.

~~d.~~ c. A practitioner that has had any license to practice terminated, revoked or suspended by a state or federal

agency may, upon restoration of such license or certificate, register ~~to be issued official prescription forms~~ with the Bureau.

11. a. ~~Except as provided in subparagraph f of this paragraph, the Bureau shall issue official~~ Official prescription forms ~~free of charge only to registered practitioners in this state. Such forms shall not be transferable. The number of official prescription forms issued to a registered~~ shall be purchased at the expense of the practitioner ~~at any time shall be at the discretion of~~ or the employer of the practitioner from a list of vendors approved by the Bureau.

b. Official prescription forms issued to a registered practitioner shall be imprinted ~~only~~ with the primary address and may include other addresses listed on the registration of the practitioner to identify the place of origin. Such prescriptions shall be sent only to the primary address of the registered practitioner.

c. Official prescription forms ~~issued to~~ of a ~~registered~~ practitioner shall be used only by the practitioner ~~to whom they are issued~~ designated on the official prescription form.

d. The Bureau may revoke or cancel official prescription forms in possession of registered practitioners when

the license of such practitioner is suspended, terminated or revoked.

e. Official prescription forms of registered practitioners who are deceased or who no longer prescribe shall be returned to the Bureau at a designated address. If the registered practitioner is deceased, it is the responsibility of the registered practitioner's estate or lawful designee to return such forms.

f. The Bureau may issue official prescription forms to employees or agents of the Bureau and other government agencies for the purpose of preventing, identifying, investigating and prosecuting unacceptable or illegal practices by providers and other persons and assisting in the recovery of overpayments under any program operated by the state or paid for with state funds. Such prescription forms shall be issued for this purpose only to individuals who are authorized to conduct investigations on behalf of the Bureau or other government agencies as part of their official duties. Individuals and agencies receiving such prescription forms for this purpose shall provide appropriate assurances to the Bureau that adequate safeguards and security measures are in place to

prevent the use of such prescription forms for anything other than official government purposes.

12. a. Adequate safeguards and security measures shall be undertaken by registered practitioners holding official prescription forms to assure against the loss, destruction, theft or unauthorized use of the forms. Registered practitioners shall maintain a sufficient but not excessive supply of such forms in reserve.

b. Registered practitioners shall immediately notify the Bureau, in a manner designated by the Bureau, upon their knowledge of the loss, destruction, theft or unauthorized use of any official prescription forms issued to them, as well as the failure to receive official prescription forms within a reasonable time after ordering them from the vendor approved by the Bureau.

c. Registered practitioners shall immediately notify the Bureau upon their knowledge of any diversion or suspected diversion of drugs pursuant to the loss, theft or unauthorized use of prescriptions.

B. 1. Except for dosages medically required for a period not to exceed seventy-two (72) hours which are administered by or on direction of a practitioner, other than a pharmacist, ~~or~~ medication

dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, or the circumstances provided for in paragraphs 5 and 6 of subsection A of this section, no controlled dangerous substance included in Schedule III or IV, which is a prescription drug as determined under regulation promulgated by the State Board of Pharmacy, shall be dispensed without an electronic prescription.

2. Any prescription for a controlled dangerous substance in Schedule III, IV or V may not be filled or refilled more than six (6) months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

C. Whenever it appears to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control that a drug not considered to be a prescription drug under existing state law or regulation of the State Board of Pharmacy should be so considered because of its abuse potential, the Director shall so advise the State Board of Pharmacy and furnish to the Board all available data relevant thereto.

D. 1. "Prescription", as used in this section, means a written, oral or electronic order by a practitioner to a pharmacist for a controlled dangerous substance for a particular patient, which specifies the date of its issue, and the full name and address of the patient and, if the controlled dangerous substance is prescribed for an animal, the species of the animal, the name and quantity of

the controlled dangerous substance prescribed, the directions for use, the name and address of the owner of the animal and, if written, the signature of the practitioner. When electronically prescribed, the full name of the patient may include the name and species of the animal.

2. "Registered practitioner", as used in this section, means a licensed practitioner duly registered with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control authorized to ~~be issued~~ purchase official prescription forms.

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

SECTION 2. This act shall become effective November 1, 2020.

Passed the House of Representatives the 9th day of March, 2020.

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Presiding Officer of the House of Representatives

Passed the Senate the ___ day of _____, 2020.

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Presiding Officer of the Senate