

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 1019

 By: Hicks and Simpson of the
 Senate

6 and

7 Marti of the House

8
9 An Act relating to pharmacy; amending Section 3,
10 Chapter 234, O.S.L. 2017 (59 O.S. Supp. 2018, Section
11 353.20.2), which relates to prescription refills;
12 providing exception to applicability of section;
13 authorizing pharmacist to dispense certain
14 medications or devices under certain conditions;
15 providing certain standard of care; excluding
16 pharmacist from certain civil and criminal liability;
17 stating exception to certain liability; providing for
18 formulary; clarifying applicability of the Pharmacy
19 Audit Integrity Act; and providing an effective date.

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

22 SECTION 1. AMENDATORY Section 3, Chapter 234, O.S.L.
23 2017 (59 O.S. Supp. 2018, Section 353.20.2), is amended to read as
24 follows:

 Section 353.20.2. A. ~~Unless~~ Except as provided in subsection C
of this section, unless the prescriber has specified on the
prescription that dispensing a prescription for a maintenance
medication in an initial amount followed by periodic refills is

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

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

10 C. 1. A pharmacist may dispense without a prescription one or
11 more devices or medications as medically necessary to prevent the
12 death of or serious harm to the health of a patient if the following
13 conditions are met:

14 a. the pharmacy which the pharmacist owns or at which the
15 pharmacist is employed has a current record of a
16 prescription for the medication or device prescribed
17 in the name of the patient who is requesting it, but
18 the prescription has expired and a refill requires
19 authorization from the licensed practitioner who
20 issued the prescription and neither the patient nor
21 the pharmacist was able to obtain the refill after
22 reasonable attempts were made to obtain such refill
23 and the pharmacist documents such attempts on a form
24 prescribed by the State Board of Pharmacy,

- 1 b. the failure of the pharmacist to dispense the
2 medication or device reasonably could result in the
3 death of or serious harm to the health of the patient,
4 c. the device or medication is listed on the formulary
5 described in paragraph 4 of this subsection,
6 d. the patient has been on a consistent medication
7 therapy as demonstrated by records maintained by the
8 pharmacy, and
9 e. the amount of the medication or device dispensed is
10 for a reasonable amount of time; provided, if the
11 patient or pharmacist is unable to obtain a refill
12 prescription from the patient's licensed practitioner
13 before the amount prescribed to prevent death or
14 serious harm to the health of the patient is depleted,
15 the pharmacist may dispense an additional amount of
16 the medication or device not more than once in an
17 amount consistent with past prescriptions of the
18 patient.

19 2. The standard of care required of a pharmacist licensed in
20 this state who is acting in accordance with the provisions of this
21 subsection shall be the level and type of care, skill and diligence
22 that a reasonably competent and skilled pharmacist with a similar
23 background and in the same or similar locality would have provided
24 under the circumstance.

1 3. Any pharmacist licensed in this state who in good faith
2 dispenses one or more medications or devices to a patient pursuant
3 to the provisions of this subsection shall not be liable for any
4 civil damages or subject to criminal prosecution as a result of any
5 acts or omissions except for committing gross negligence or willful
6 or wanton acts committed in dispensing or failure to dispense the
7 medication or device.

8 4. The State Board of Pharmacy shall develop and update as
9 necessary an inclusionary formulary of potentially life-saving
10 prescription medications and devices, not to include controlled
11 dangerous substances, for the purposes of this subsection. Such
12 medications and devices shall include but not be limited to:

- 13 a. insulin and any devices or supplies necessary for the
14 administration of insulin,
15 b. glucometers and any devices or supplies necessary for
16 the operation of the glucometer, and
17 c. rescue inhalers.

18 5. Dispensing in accordance with this subsection shall be
19 deemed dispensing under a legal prescription for purposes of the
20 Pharmacy Audit Integrity Act, Section 356 et seq. of this title.

21 SECTION 2. This act shall become effective November 1, 2019.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/02/2019 - DO
24 PASS.