As Amended by House Committee

Session of 2014

HOUSE BILL No. 2609

By Committee on Health and Human Services

2-11

AN ACT concerning the pharmacy act of the state of Kansas; relating to the practice of pharmacy; filling and refilling of prescriptions; amending K.S.A. 65-1626a and K.S.A. 2013 Supp. 65-1637b and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-1626a is hereby amended to read as follows: 65-1626a. (a) For the purpose of the pharmacy act of the state of Kansas, the following persons shall be deemed to be engaged in the practice of pharmacy:

(1) Persons who publicly profess to be a pharmacist, or publicly profess to assume the duties incident to being a pharmacist and their knowledge of drugs or drug actions, or both; *and*

(2) persons who attach to their name any words or abbreviation indicating that they are a pharmacist licensed to practice pharmacy in Kansas.

(b) **(1)** "Practice of pharmacy" means the interpretation and evaluation of prescription orders; the compounding, dispensing and labeling of drugs and devices pursuant to prescription orders; the administering of vaccine pursuant to a vaccination protocol; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of prescription drugs and prescription devices and the maintenance of proper records thereof in accordance with law; consultation with patients and other health care practitioners about the safe and effective use of prescription drugs and prescription devices; *performance of ~~individual patient~~* **collaborative** *drug therapy management pursuant to a written collaborative practice ~~protocol~~* **agreement** *with one or more ~~prescribers~~* **physicians** *who have an established physician-patient relationship;* and participation in the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy. Nothing in this ~~subsection~~ *section* shall be construed to add any additional requirements for registration or for a permit under the pharmacy act of the state of Kansas or for approval under subsection (g) of K.S.A. 65-1643, and amendments thereto, or to prevent persons other than pharmacists from engaging in drug utilization review, or to require persons lawfully in

possession of prescription drugs or prescription devices to meet any storage or record keeping requirements except such storage and record keeping requirements as may be otherwise provided by law or to affect any person consulting with a health care practitioner about the safe and effective use of prescription drugs or prescription devices.

(2) "Collaborative drug therapy management" means a practice of pharmacy where a pharmacist performs certain pharmaceutical-related patient care functions for a specific patient which have been delegated to the pharmacist by a physician through a collaborative practice agreement. A physician who enters into a collaborative practice agreement is responsible for the care of the patient following initial diagnosis and assessment and for the direction and supervision of the pharmacist throughout the collaborative drug therapy management process. Nothing in this subsection shall be construed to permit a pharmacist to alter a physician's orders or directions, diagnose or treat any disease, independently prescribe drugs or independently practice medicine and surgery.

(3) "Collaborative practice agreement" means a written agreement or protocol between one or more pharmacists and one or more physicians that provides for collaborative drug therapy management. Such collaborative practice agreement shall contain certain specified conditions or limitations pursuant to the collaborating physician's order, standing order, delegation or protocol. A collaborative practice agreement shall be: (A) Consistent with the normal and customary specialty, competence and lawful practice of the physician; and (B) appropriate to the pharmacist's training and experience.

(4) "Physician" means a person licensed to practice medicine and surgery in this state.

Sec. 2. K.S.A. 2013 Supp. 65-1637b is hereby amended to read as follows: 65-1637b. (a) The pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of any prescription order consistent with federal and state laws and rules and regulations. A pharmacist shall not dispense a prescription drug if the pharmacist, in the exercise of professional judgment, determines that the prescription is not a valid prescription order.

(b) The prescriber may authorize an agent to transmit to the pharmacy a prescription order orally, by facsimile transmission or by electronic transmission provided that the first and last names of the transmitting agent are included in the order.

(c) (1) A new written or electronically prepared and transmitted prescription order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the first and last names

of the transmitting agent shall be included in the order.

(2) If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy.

(3) An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the prescription has been printed prior to electronic transmission. An electronically prepared and transmitted prescription which is printed following electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

(4) In consultation with industry, the state board of pharmacy shall conduct a study on the issues of electronic transmission of prior authorizations and step therapy protocols. The report on the results of such study shall be completed and submitted to the legislature no later than January 15, 2013.

(5) The board is hereby authorized to conduct pilot projects related to any new technology implementation when deemed necessary and practicable, except that no state moneys shall be expended for such purpose.

(d) An authorization to refill a prescription order or to renew or continue an existing drug therapy may be transmitted to a pharmacist through oral communication, in writing, by facsimile transmission or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent, and the first and last names of the transmitting agent are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the refill order or renewal order differs in any manner from the original order, such as a change of the drug strength, dosage form or directions for use, the prescriber shall sign the order as provided by paragraph (1).

(e) Regardless of the means of transmission to a pharmacy, only a pharmacist or a pharmacist intern shall be authorized to receive a new prescription order from a prescriber or transmitting agent. A pharmacist, a pharmacist intern or a registered pharmacy technician may receive a refill or renewal order from a prescriber or transmitting agent if such registered pharmacy technician's supervising pharmacist has authorized that function.

(f) A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription order.

~~(1) A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18~~

~~months following the date on which the prescription is issued.~~

~~(2)~~ A prescription for a schedule III, IV or V controlled substance may authorize no more than five refills within six months following the date on which the prescription is issued.

(g) Prescriptions shall only be filled or refilled in accordance with the following requirements:

(1) All prescriptions shall be filled in strict conformity with any directions of the prescriber, except that a pharmacist who receives a prescription order for a brand name drug product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser unless:

(A) The prescriber, in the case of a prescription ~~manually or~~ electronically signed by the prescriber ~~and prepared on a form containing two signature lines, signs the signature line following~~, *includes* the statement "dispense as written" *on the prescription*;

(B) the prescriber, in the case of a written prescription signed by the prescriber, writes in the prescriber's own handwriting "dispense as written" on the prescription;

(C) the prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates the prescription is to be dispensed as communicated; or

(D) the federal food and drug administration has determined that a drug product of the same generic name is not bioequivalent to the prescribed brand name prescription medication.

(h) If a prescription order contains a statement that during any particular time the prescription may be refilled at will, there shall be no limitation as to the number of times that such prescription may be refilled except that it may not be refilled after the expiration of the time specified or one year after the prescription was originally issued, whichever occurs first.

(i) Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the prescriber, shall bear the *full* name of the person so telephoning. Nothing in this section shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.

(j) (1) Except as provided in paragraph (2), no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.

(2) A pharmacist may refill a prescription order issued on or after the effective date of this act for any prescription drug except a drug listed on

schedule II of the uniform controlled substances act or a narcotic drug listed on any schedule of the uniform controlled substances act without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety and welfare. Such prescription refill shall only be in an amount judged by the pharmacist to be sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this paragraph be more than a seven day supply or one package of the drug. However, if the prescriber states on a prescription that there shall be no emergency refilling of that prescription, then the pharmacist shall not dispense any emergency medication pursuant to that prescription. A pharmacist who refills a prescription order under this subsection (j)(2) shall contact the prescriber of the prescription order on the next business day subsequent to the refill or as soon thereafter as possible. No pharmacist shall be required to refill any prescription order under this subsection (j)(2). A prescriber shall not be subject to liability for any damages resulting from the refilling of a prescription order by a pharmacist under this subsection (j)(2) unless such damages are occasioned by the gross negligence or willful or wanton acts or omissions by the prescriber.

(k) If any prescription order contains a provision that the prescription may be refilled a specific number of times within or during any particular period, such prescription shall not be refilled except in strict conformity with such requirements.

(l) Any pharmacist who exercises brand exchange and dispenses a less expensive drug product shall not charge the purchaser more than the regular and customary retail price for the dispensed drug.

(m) Nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if in the pharmacist's professional judgment and discretion such pharmacist is of the opinion that it should not be filled or refilled.

New Sec. 3. (a) Not later than 90 days after the effective date of this act, the state board of pharmacy and the state board of healing arts shall appoint a seven-member committee to be known as the collaborative drug therapy management advisory committee for the purpose of promoting consistent regulation and to enhance coordination among such boards with jurisdiction over licensees involved in collaborative drug therapy management. Such committee shall advise and make recommendations to the state board of pharmacy and state board of healing arts on matters relating to collaborative drug therapy management.

(b) The collaborative drug therapy management advisory

committee shall consist of seven members: (1) One member of the board of pharmacy appointed by the board of pharmacy, who shall serve as the nonvoting chairperson; (2) three licensed pharmacists appointed by the state board of pharmacy, at least two of whom shall have experience in collaborative drug therapy management; and (3) three persons licensed to practice medicine and surgery appointed by the state board of healing arts, at least two of whom shall have experience in collaborative drug therapy management. The state board of pharmacy shall give consideration to any names submitted by the Kansas pharmacists association when making appointments to the committee. The state board of healing arts shall give consideration to any names submitted by the Kansas medical society when making appointments to the committee. Members appointed to the committee shall serve terms of two years, except that of the four members of the committee first appointed to the committee by the state board of pharmacy, two shall be appointed for terms of two years and two shall be appointed for terms of one year as specified by the state board of pharmacy and that of the three members of the committee first appointed to the committee by the state board of healing arts, two shall be appointed for terms of two years and one shall be appointed for a term of one year as specified by the state board of healing arts. Members appointed to the committee shall serve without compensation. All expenses of the committee shall be equally divided and paid by the state board of pharmacy and state board of healing arts.

(c) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

Sec. ~~3.~~ **4.** K.S.A. 65-1626a and K.S.A. 2013 Supp. 65-1637b are hereby repealed.

Sec. ~~4.~~ **5.** This act shall take effect and be in force from and after its publication in the statute book.