

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2039

By: Wallace

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8 COMMITTEE SUBSTITUTE

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10 An Act relating to pharmacies; amending 59 O.S. 2011,
11 Section 353.24, as last amended by Section 5, Chapter
12 285, O.S.L. 2016 (59 O.S. Supp. 2016, Section
13 353.24), which relates to the Oklahoma Pharmacy Act;
14 clarifying terms; amending Section 1, Chapter 263,
15 O.S.L. 2014, as amended by Section 7, Chapter 285,
16 O.S.L. 2016 (59 O.S. Supp. 2016, Section 357), which
17 relates to pharmacy benefit plans; modifying
18 definitions; amending Section 6, Chapter 154, O.S.L.
19 2014 (63 O.S. Supp. 2016, Section 2-312.2), which
20 relates to the sale or dispensation of naloxone;
21 authorizing pharmacist to prescribe and dispense
22 naloxone; providing that no dispensing protocol shall
23 be required; authorizing pharmacists to exercise
24 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:

SECTION 1. AMENDATORY 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), is amended to read as follows:

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

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

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

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

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

- 20 a. patient-specific filled prescriptions may be delivered
21 or shipped to a prescriber's clinic for pick-up by
22 those patients ~~who~~ whom the prescriber has
23 individually determined and documented do not have a
24 permanent or secure mailing address,

- 1 b. patient-specific filled prescriptions for drugs which
2 require special handling written by a prescriber may
3 be delivered or shipped to the prescriber's clinic for
4 administration or pick-up at the prescriber's office,
5 c. patient-specific filled prescriptions, including
6 sterile compounded drugs, may be delivered or shipped
7 to a prescriber's clinic where they shall be
8 administered,
9 d. patient-specific filled prescriptions for patients
10 under Medicare and/or Medicaid for End Stage Renal
11 Disease (ESRD) may be delivered or shipped to a
12 prescriber's clinic for administration or final
13 delivery to the patient, or
14 e. patient-specific filled prescriptions for
15 radiopharmaceuticals may be delivered or shipped to a
16 prescriber's clinic for administration or pick-up.

17 However, nothing in this paragraph shall prevent a pharmacist or
18 an employee of the pharmacy from personally receiving a prescription
19 or delivering a legally filled prescription to a residence, office
20 or place of employment of the patient for whom the prescription was
21 written. Provided further, the provisions of this paragraph shall
22 not apply to any Department of Mental Health and Substance Abuse
23 Services employee or any person whose facility contracts with the
24 Department of Mental Health and ~~Substances~~ Substance Abuse Services

1 whose possession of any dangerous drug, as defined in Section 353.1
2 of this title, is for the purpose of delivery of a mental health
3 consumer's medicine to the consumer's home or residence. Nothing in
4 this paragraph shall prevent veterinary prescription drugs from
5 being shipped directly from an Oklahoma licensed wholesaler or
6 distributor registered with the Oklahoma Board of Veterinary Medical
7 Examiners to a client; provided, such drugs may be dispensed only on
8 prescription of a licensed veterinarian and only when an existing
9 veterinary-client-patient relationship exists;

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

13 6. Refuse to permit or otherwise prevent members of the Board
14 or such representatives thereof from entering and inspecting any and
15 all places, including premises, vehicles, equipment, contents, and
16 records, where drugs, medicine, chemicals or poisons are stored,
17 sold, vended, given away, compounded, dispensed, repackaged,
18 transported, or manufactured;

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

22 8. Possess dangerous drugs without a valid prescription or a
23 valid license to possess such drugs; provided, however, this
24 provision shall not apply to any Department of Mental Health and

1 Substance Abuse Services employee or any person whose facility
2 contracts with the Department of Mental Health and Substances Abuse
3 Services whose possession of any dangerous drug, as defined in
4 Section 353.1 of this title, is for the purpose of delivery of a
5 mental health consumer's medicine to the consumer's home or
6 residence;

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

11 10. Fail to have a written drug diversion detection and
12 prevention policy;

13 11. Possess, sell, offer for sale, barter or give away any
14 quantity of dangerous drugs not listed as a scheduled drug pursuant
15 to Sections 2-201 through 2-212 of Title 63 of the Oklahoma Statutes
16 when obtained by prescription bearing forged, fictitious or altered
17 information.

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

23 b. A second violation of this section shall constitute a
24 felony and upon conviction shall be punishable by

imprisonment in the Department of Corrections for a term not exceeding five (5) years and a fine in an amount not more than Two Thousand Dollars (\$2,000.00);

12. Violate a Board order or agreed order;

13. Compromise the security of licensure examination materials;

or

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

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

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

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

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

1 5. No pharmacy, pharmacist-in-charge or other person shall
2 permit the practice of pharmacy except by a licensed pharmacist or
3 assistant pharmacist.

4 6. No person shall subvert the authority of the pharmacist-in-
5 charge of the pharmacy by impeding the management of the
6 prescription department to act in compliance with federal and state
7 law.

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

10 2. It shall be unlawful for a wholesale distributor to purchase
11 drugs from a pharmacy.

12 SECTION 2. AMENDATORY Section 1, Chapter 263, O.S.L.
13 2014, as amended by Section 7, Chapter 285, O.S.L. 2016 (59 O.S.
14 Supp. 2016, Section 357), is amended to read as follows:

15 Section 357. As used in this act:

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

1 insurance policies and contracts that do not include prescription
2 drug coverage;

3 2. "Covered individual" means a member, participant, enrollee,
4 contract holder or policy holder or beneficiary of a covered entity
5 who is provided health coverage by the covered entity. A covered
6 individual includes any dependent or other person provided health
7 coverage through a policy, contract or plan for a covered
8 individual;

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

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

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

18 6. "Pharmacy benefits management" means a service provided to
19 covered entities to facilitate the provision of prescription drug
20 benefits to covered individuals within the state, including
21 negotiating pricing and other terms with drug manufacturers and
22 providers. Pharmacy benefits management may include any or all of
23 the following services:
24

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

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

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

9. "Provider" means a pharmacy licensed by the State Board of Pharmacy, or an agent or representative of a pharmacy, including,

1 but not limited to, the pharmacy's contracting agent, which
2 dispenses prescription drugs or devices to covered individuals.

3 SECTION 3. AMENDATORY Section 6, Chapter 154, O.S.L.
4 2014 (63 O.S. Supp. 2016, Section 2-312.2), is amended to read as
5 follows:

6 Section 2-312.2 Naloxone, also known as Narcan, or any of its
7 generic equivalents may be dispensed or sold by a pharmacy without a
8 prescription; provided, however, it shall be dispensed or sold only
9 by, or under the supervision of, a licensed pharmacist. Naloxone
10 may be prescribed and dispensed by a licensed pharmacist; provided,
11 however, it shall be dispensed only by, or under the supervision of,
12 a licensed pharmacist. No dispensing protocol shall be required.

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

16 A. Unless the prescriber has specified on the prescription that
17 dispensing a prescription for a maintenance medication in an initial
18 amount followed by periodic refills is medically necessary, a
19 pharmacist may exercise his or her professional judgment to dispense
20 varying quantities of medication per fill-
21 up to the total number of dosage units as authorized by the
22 prescriber on the original prescription including any refills.

23 B. Subsection A of this section shall not apply to scheduled
24 medications or any medications for which a report is required under

1 the controlled substance database. Dispensing of medication based
2 on refills authorized by the physician on the prescription shall be
3 limited to no more than a ninety-day supply of the medication.

4 SECTION 5. This act shall become effective November 1, 2017.
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6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
7 03/02/2017 - DO PASS, As Amended and Coauthored.
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