

Senator Curtis S. Bramble proposes the following substitute bill:

PHARMACY PRACTICE ACT REVISIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends the exemptions from licensure in the Pharmacy Practice Act.

Highlighted Provisions:

This bill:

- ▶ defines a cancer drug treatment regimen;
- ▶ exempts an oncologist from the Pharmacy Practice Act when the oncologist provides a cancer drug treatment regimen to a patient who is currently undergoing chemotherapy in an outpatient clinic;
- ▶ excludes Schedule I, II, and III drugs from the drugs an oncologist may provide to a patient under the exemption from the Pharmacy Practice Act; and
- ▶ includes assistants to the oncologist who are under the supervision of the oncologist in the exemption from the Pharmacy Practice Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **58-17b-309**, as last amended by Laws of Utah 2011, Chapter 76

27

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **58-17b-309** is amended to read:

30 **58-17b-309. Exemptions from licensure.**

31 (1) For purposes of this section:

32 (a) "Cancer drug treatment regimen":

33 (i) means a prescription drug used to treat cancer, manage its symptoms, or provide
34 continuity of care for a cancer patient;

35 (ii) includes:

36 (A) a chemotherapy drug administered intravenously, orally, rectally, or by dermal
37 methods; and

38 (B) a drug used to support cancer treatment, including to treat, alleviate, or minimize
39 physical and psychological symptoms or pain, or to improve patient tolerance of cancer
40 treatments or prepare a patient for a subsequent course of therapy; and

41 (iii) does not mean a drug listed under federal law as a Schedule I, II, or III drug.

42 [~~(a)~~] (b) "Cosmetic drug":

43 (i) means a prescription drug that is:

44 (A) for the purpose of promoting attractiveness or altering the appearance of an
45 individual; and

46 (B) listed as a cosmetic drug subject to the exemption under this section by the division
47 by administrative rule; and

48 (ii) does not include a prescription drug that is:

49 (A) a controlled substance;

50 (B) compounded by the physician; or

51 (C) prescribed or used for the patient for the purpose of diagnosing, curing, mitigating,
52 treating, or preventing a disease.

53 [~~(b)~~] (c) "Injectable weight loss drug":

54 (i) means an injectable prescription drug:

55 (A) prescribed to promote weight loss; and

56 (B) listed as an injectable prescription drug subject to exemption under this section by

57 the division by administrative rule; and

58 (ii) does not include a prescription drug that is a controlled substance.

59 ~~(c)~~ (d) "Prescribing practitioner" means an individual licensed under:

60 (i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with

61 prescriptive practice;

62 (ii) Chapter 67, Utah Medical Practice Act;

63 (iii) Chapter 68, Utah Osteopathic Medical Practice Act; or

64 (iv) Chapter 70a, Physician Assistant Act.

65 (2) In addition to the exemptions from licensure in Section 58-1-307, the following
66 individuals may engage in the acts or practices described in this section without being licensed
67 under this chapter:

68 (a) a person selling or providing contact lenses in accordance with Section 58-16a-801;

69 (b) an individual engaging in the practice of pharmacy technician under the direct
70 personal supervision of a pharmacist while making satisfactory progress in an approved
71 program as defined in division rule;

72 (c) a prescribing practitioner who prescribes and dispenses a cosmetic drug or an
73 injectable weight loss drug to the prescribing practitioner's patient in accordance with
74 Subsection (4); ~~and~~

75 (d) an optometrist, as defined in Section 58-16a-102, acting within the optometrist's
76 scope of practice as defined in Section 58-16a-601, who prescribes and dispenses a cosmetic
77 drug to the optometrist's patient in accordance with Subsection (4)~~[-]; and~~

78 (e) (i) a prescribing practitioner who:

79 (A) treats a patient who is currently undergoing chemotherapy in an outpatient clinic
80 setting;

81 (B) prescribes a cancer drug treatment regimen to the patient;

82 (C) determines that providing the cancer drug treatment regimen to the patient in the
83 outpatient clinic setting is in the best interest of the patient, or provides better access to care for
84 the patient;

85 (D) discloses to the patient that the cancer drug treatment regimen may be obtained
86 from a pharmacy unaffiliated with the prescribing practitioner;

87 (E) does not directly or indirectly mark up, charge a commission, or make a profit on

88 providing the cancer drug regimen, but may obtain payment for expenses and services related
89 to providing the cancer drug regimen;

90 (F) provides the cancer drug treatment regimen to the patient, or directs another person
91 under Subsection (2)(e)(ii) to provide the cancer drug treatment regimen to the patient;

92 (G) is certified or eligible to be certified by the American Board of Internal Medicine
93 in medical oncology; and

94 (H) reports to the Utah Controlled Substance Database in the same manner as required
95 by Section 58-37f-203, and labeling, recordkeeping, patient counseling, and storage
96 requirements established by administrative rule adopted by the division in consultation with the
97 board; and

98 (ii) a person who is not a prescribing practitioner who:

99 (A) is employed by a prescribing practitioner or the outpatient clinic setting in which
100 the prescribing practitioner works;

101 (B) is acting under the direction of the prescribing practitioner who is immediately
102 available as defined in 42C.F.R. 410.74(a)(2)(IV) for any necessary consultation, and who has
103 complied with Subsection (2)(e)(i);

104 (C) provides the cancer drug treatment regimen to the patient at the outpatient clinic
105 setting; and

106 (D) follows Subsections (2)(e)(i)(E) and (H).

107 (3) In accordance with Subsection 58-1-303(1)(a), an individual exempt under
108 Subsection (2)(b) must take all examinations as required by division rule following completion
109 of an approved curriculum of education, within the required time frame. This exemption
110 expires immediately upon notification of a failing score of an examination, and the individual
111 may not continue working as a pharmacy technician even under direct supervision.

112 (4) A prescribing practitioner or optometrist is exempt from licensing under the
113 provisions of this part if the prescribing practitioner or optometrist:

114 (a) (i) writes a prescription for a drug the prescribing practitioner or optometrist has the
115 authority to dispense under Subsection (4)(b); and

116 (ii) informs the patient:

117 (A) that the prescription may be filled at a pharmacy or dispensed in the prescribing
118 practitioner's or optometrist's office;

119 (B) of the directions for appropriate use of the drug;
120 (C) of potential side-effects to the use of the drug; and
121 (D) how to contact the prescribing practitioner or optometrist if the patient has
122 questions or concerns regarding the drug;

123 (b) dispenses a cosmetic drug or injectable weight loss drug only to the prescribing
124 practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the optometrist's
125 patients; and

126 (c) follows labeling, record keeping, patient counseling, and storage requirements
127 established by administrative rule adopted by the division in consultation with the boards listed
128 in Subsection (5)(a).

129 (5) (a) The division, in consultation with the board under this chapter, the Physician
130 Licensing Board, the Osteopathic Physician Licensing Board, the Physician Assistant Licensing
131 Board, the Board of Nursing, and the Optometrist Licensing Board shall adopt administrative
132 rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act to designate:

133 (i) the prescription drugs that may be dispensed as a cosmetic drug or weight loss drug
134 under this section; and

135 (ii) the requirements under Subsection (4)(c).

136 (b) When making a determination under Subsection (1)~~(a)~~(b), the division and boards
137 listed in Subsection (5)(a), may consider any federal Food and Drug Administration indications
138 or approval associated with a drug when adopting a rule to designate a prescription drug that
139 may be dispensed under this section.

140 (c) The division may inspect the office of a prescribing practitioner or optometrist who
141 is dispensing under the provisions of this section, in order to determine whether the prescribing
142 practitioner or optometrist is in compliance with the provisions of this section. If a prescribing
143 practitioner or optometrist chooses to dispense under the provisions of this section, the
144 prescribing practitioner or optometrist consents to the jurisdiction of the division to inspect the
145 prescribing practitioner's or optometrist's office and determine if the provisions of this section
146 are being met by the prescribing practitioner and optometrist.

147 (d) If a prescribing practitioner or optometrist violates a provision of this section, the
148 prescribing practitioner or optometrist may be subject to discipline under:

149 (i) this chapter; and

- 150 (ii) (A) Chapter 16a, Utah Optometry Practice Act;
151 (B) Chapter 31b, Nurse Practice Act;
152 (C) Chapter 67, Utah Medical Practice Act;
153 (D) Chapter 68, Utah Osteopathic Medical Practice Act; or
154 (E) Chapter 70a, Physician Assistant Act.
155 (6) Except as provided in Subsection (2)(d), this section does not restrict or limit the
156 scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah
157 Optometry Practice Act.