



House of Representatives *State of Utah*

UTAH STATE CAPITOL COMPLEX • 350 STATE CAPITOL
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NOTICE OF BILL RETURNED TO RULES COMMITTEE

March 1, 2012

Madam Speaker:

The Health and Human Services Committee has returned **H.B. 165**, PHARMACY PATIENT COUNSELING AMENDMENTS, by Representative M. Poulson, to the Rules Committee without recommendation with the following amendments:

1. *Page 1, Lines 10 through 14:*

10 Highlighted Provisions:

11 This bill:

12 ▶ amends definitions;

13 ▶ amends patient counseling provisions; ~~{and}~~ =

▶ requires rulemaking; and

14 ▶ makes technical changes.

2. *Page 1, Line 21:*

21 58-17b-102, as last amended by Laws of Utah 2010, Chapter 101

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

3. *Page 7, Line 212 through Page 8, Line 215:*

212 (43) "Patient counseling" means ~~[the]~~ written ~~[and]~~ or oral communication by ~~[the]~~ a

213 pharmacist ~~{or}~~ a pharmacy intern ~~[of information, to the]~~ , or other person

with dispensing authority with a patient ~~[or caregiver, in order], or~~

214 a patient's agent, to ensure the proper use of ~~[drugs, devices, and dietary supplements]~~ a

215 drug,

device, or dietary supplement.

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4. Page 13, Lines 374 through 384:

374 (2) A class D pharmacy shall provide oral patient counseling by telephone, or by
video
375 conferencing over a secure data connection, for each prescription drug it dispenses to a
patient
376 in this state.

377 (3) (a) [~~The provisions of Subsections (1) and (2) do not apply to~~] If a class A
378 pharmacy or a class D pharmacy dispenses a prescription drug for a patient who is
incarcerated
379 [~~patients or persons~~] {~~or otherwise under the jurisdiction of~~} by the Utah
Department of Corrections
380 or a county detention facility[~~:(b) A~~] in this state, the pharmacy shall provide patient
381 counseling for the prescription by written or oral communication [~~with a person~~
~~described in~~
382 Subsection (3)(a) shall be used by a pharmacist or pharmacy intern] {~~in lieu of~~} [a
face to face or
383 telephonic communication for the purpose of counseling the patient] {the oral
communication}
384 {required under Subsection (1) or (2)} .

5. Page 13, Line 384:

384 required under Subsection (1) or (2).

(4) This section shall be implemented in accordance with rules made by the
division in consultation with the Board of pharmacy and in accordance with
Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6. Page 12, Lines 357 through 358:

357 dispenses drugs intended for use by animals or for sale to veterinarians for the
administration
358 for animals.

Section 2. Section 58-17B-309 is amended to read:

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58-17b-309. Exemptions from licensure.

- (1) For purposes of this section:
- (a) "Cosmetic drug":
 - (i) means a prescription drug that is:
 - (A) for the purpose of promoting attractiveness or altering the appearance of an individual; and
 - (B) listed as a cosmetic drug subject to the exemption under this section by the division by administrative rule; and
 - (ii) does not include a prescription drug that is:
 - (A) a controlled substance;
 - (B) compounded by the physician; or
 - (C) prescribed or used for the patient for the purpose of diagnosing, curing, mitigating, treating, or preventing a disease.
 - (b) "Injectable weight loss drug":
 - (i) means an injectable prescription drug:
 - (A) prescribed to promote weight loss; and
 - (B) listed as an injectable prescription drug subject to exemption under this section by the division by administrative rule; and
 - (ii) does not include a prescription drug that is a controlled substance.
- = **(c) "Patient counseling":**
(i) is as defined in Section 58-17b-102; and
(ii) is limited to in-person face-to-face oral communication or communication by video conferencing over a secure data connection.
- ~~{(c)}~~ **(d)** "Prescribing practitioner" means an individual licensed under:
- (i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with prescriptive practice;
 - (ii) Chapter 67, Utah Medical Practice Act;
 - (iii) Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (iv) Chapter 70a, Physician Assistant Act.
- (2) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the acts or practices described in this section without being licensed under this chapter:
- (a) a person selling or providing contact lenses in accordance with Section 58-16a-801;



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

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

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

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

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

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

(ii) informs the patient:

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

(B) of the directions for appropriate use of the drug;

(C) of potential side-effects to the use of the drug; and

(D) how to contact the prescribing practitioner or optometrist if the patient has questions or concerns regarding the drug;

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

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

(5) (a) The division, in consultation with the board under this chapter, the Physician Licensing Board, the Osteopathic Physician Licensing Board, the Physician Assistant

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Licensing Board, the Board of Nursing, and the Optometrist Licensing Board shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act to designate:

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

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

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

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

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

(i) this chapter; and

(ii) (A) Chapter 16a, Utah Optometry Practice Act;

(B) Chapter 31b, Nurse Practice Act;

(C) Chapter 67, Utah Medical Practice Act;

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

(E) Chapter 70a, Physician Assistant Act.

(6) Except as provided in Subsection (2)(d), this section does not restrict or limit the scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah Optometry Practice Act.

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Renumber remaining sections accordingly.

Respectfully,

Paul Ray
Committee Chair

Voting: --

14 HB0165.HC1.WPD 3/1/12 10:35 am markandrews/MDA CJD/MDA

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