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S.B. 236
1st Sub. (Green)

Senator Evan J. Vickers proposes the following substitute bill:

PHARMACY PRACTICE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill amends the Pharmacy Practice Act.

Highlighted Provisions:

This bill:

- amends provisions related to the accepting back and redistributing of an unused drug;
- amends refill provisions for insulin;
- amends provisions related to the dispensing of diabetes supplies;
- amends provisions related to the dispensing of prescription drugs by a hospital pharmacy;
- authorizes the dispensing of a drug to treat a sexually transmitted disease by a physician treating a patient at a state or local health department clinic; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

1st Sub. S.B. 236

AMENDS:

58-17b-502, as last amended by Laws of Utah 2020, Chapter 25

58-17b-503, as last amended by Laws of Utah 2016, Chapter 405

58-17b-608.2, as enacted by Laws of Utah 2020, Chapter 310

58-17b-610.6, as enacted by Laws of Utah 2017, Chapter 44

58-17b-610.8, as enacted by Laws of Utah 2020, Chapter 372

58-17b-620, as last amended by Laws of Utah 2012, Chapter 150

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

Section 1. Section **58-17b-502** is amended to read:

58-17b-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes:

(a) willfully deceiving or attempting to deceive the division, the board, or their agents as to any relevant matter regarding compliance under this chapter;

(b) except as provided in Subsection (2):

(i) paying or offering rebates to practitioners or any other health care providers, or receiving or soliciting rebates from practitioners or any other health care provider; or

(ii) paying, offering, receiving, or soliciting compensation in the form of a commission, bonus, rebate, kickback, or split fee arrangement with practitioners or any other health care provider, for the purpose of obtaining referrals;

(c) misbranding or adulteration of any drug or device or the sale, distribution, or dispensing of any outdated, misbranded, or adulterated drug or device;

(d) engaging in the sale or purchase of drugs or devices that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases;

(e) except as provided in Section 58-17b-503 [~~or Part 9, Charitable Prescription Drug Recycling Act~~], accepting back and redistributing any unused drug, or a part of it, after it has left the premises of [~~any~~] a pharmacy[~~, unless the drug is in a unit pack, as defined in Section 58-17b-503, or the manufacturer's sealed container, as defined in rule~~];

(f) an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician;

(g) violating:

(i) the federal Controlled Substances Act, Title II, P.L. 91-513;

(ii) Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) rules or regulations adopted under either act;

(h) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, as defined in this chapter and division rules made in collaboration with the board, or beyond their scope of training and ability;

(i) administering:

(i) without appropriate training, as defined by rule;

(ii) without a physician's order, when one is required by law; and

(iii) in conflict with a practitioner's written guidelines or written protocol for administering;

(j) disclosing confidential patient information in violation of the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, or other applicable law;

(k) engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist-in-charge;

(l) failing to report to the division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency, or court for conduct that in substance would be considered unprofessional conduct under this section;

(m) as a pharmacist or pharmacy intern, compounding a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner;

(n) failing to act in accordance with Title 26, Chapter 64, Family Planning Access Act, when dispensing a self-administered hormonal contraceptive under a standing order;

(o) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act; or

(p) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (o) or Subsection 58-1-501(1).

(2) Subsection (1)(b) does not apply to:

(a) giving or receiving a price discount based on purchase volume;

(b) passing along a pharmaceutical manufacturer's rebate; or

(c) providing compensation for services to a veterinarian.

(3) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

(a) when registered as a pharmacy medical provider, as that term is defined in Section 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(b) when acting as a state central patient portal medical provider, as that term is defined in Section 26-61a-102, providing state central patient portal medical provider services.

(4) Notwithstanding Subsection (3), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a pharmacist described in Subsections (3)(a) and (b).

Section 2. Section **58-17b-503** is amended to read:

58-17b-503. Exception to unprofessional conduct.

(1) For purposes of this section:

(a) "Licensed intermediate care facility for people with an intellectual disability" means an intermediate care facility for people with an intellectual disability that is licensed as a nursing care facility or a small health care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(b) "Nursing care facility" means the same as that term is defined in Section 26-21-2.

(c) "Unit pack" means a tamper-resistant nonreusable single-dose single-drug package with identification that indicates the lot number and expiration date for the drug.

(2) A pharmacist may accept and redistribute an unused drug, or part of it, after it has left the premises of the pharmacy:

(a) [~~accept and redistribute an unused drug under~~] in accordance with Part 9, Charitable Prescription Drug Recycling Act; [~~or~~]

(b) [~~accept back and redistribute any unused drug, or a part of it, after it has left the premises of the pharmacy~~] if:

(i) the drug was prescribed to a patient in a nursing care facility, licensed intermediate care facility for people with an intellectual disability, or state prison facility, county jail, or state

hospital;

(ii) the drug was stored under the supervision of a licensed health care provider according to manufacturer recommendations;

(iii) the drug is in a unit pack or in the manufacturer's sealed container;

(iv) the drug was returned to the original dispensing pharmacy;

(v) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy intern; and

(vi) accepting back and redistributing of the drug complies with federal Food and Drug Administration and Drug Enforcement Administration regulations[~~.~~];

(c) if:

(i) the pharmacy has attempted to deliver the drug to a patient or a patient's agent via the United States Postal Service, a licensed common carrier, or supportive personnel;

(ii) the drug is returned to the pharmacy by the same person or carrier that attempted to deliver the drug; and

(iii) in accordance with United States Food and Drug Administration regulations and rules established by the division, a pharmacist at the pharmacy determines that the drug has not been adversely affected by the drug's attempted delivery and return.

Section 3. Section **58-17b-608.2** is amended to read:

58-17b-608.2. Insulin prescriptions and diabetes supplies.

(1) As used in this section, "exhausted prescription" means a prescription for an insulin that the patient is currently using that:

(a) expired no earlier than six months before the patient requests the pharmacist for a refill; or

(b) is not expired and has no refills remaining.

(2) If a valid prescription for insulin includes an authorization for one or more refills, a pharmacist may combine refills to dispense a supply for [~~90~~] 100 days but may not exceed the total supply authorized by the refills.

(3) Notwithstanding Section 58-17b-608 and Subsection (2), a pharmacist may, on an emergency basis, dispense a refill for an exhausted prescription based on the prescribing practitioner's instructions for the exhausted prescription in an amount up to a supply for 60 days.

(4) A pharmacist may dispense insulin for an exhausted prescription described in Subsection (3) no more than one time per exhausted prescription.

(5) Before a pharmacist may dispense insulin under Subsection (3), the pharmacist shall:

(a) attempt to contact the prescribing practitioner to inform the prescribing practitioner that the patient's prescription has expired; and

(b) notify the patient of the outcome of the attempt described in Subsection (5)(a).

(6) Within 30 days after the day on which a pharmacist dispenses insulin under Subsection (3), the pharmacist shall inform the prescribing practitioner of:

(a) the amount of insulin dispensed; and

(b) the type of insulin dispensed.

[~~(7) The division, in consultation with the Board of Pharmacy and the Physicians Licensing Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the safe dispensing of insulin under Subsection (3).~~]

[~~(8) Notwithstanding Section 58-17b-605.5, a pharmacist, when filling a prescription for insulin, may dispense an interchangeable biological product, as defined in Subsection 58-17b-605.5(1), except that the pharmacist may not dispense an interchangeable biological product if a prescribing practitioner prohibits the substitution through a method described in Subsection 58-17b-605.5(6).~~]

[~~(9)~~] (7) A pharmacist may dispense [~~the~~] a therapeutic equivalent when filling a prescription for:

(a) a glucometer;

(b) diabetes test strips;

(c) lancets; [~~or~~]

(d) syringes[~~.~~];

(e) needles; or

(f) other supplies for treating diabetes designated by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 4. Section **58-17b-610.6** is amended to read:

58-17b-610.6. Hospital pharmacy dispensing prescription drugs.

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act, in consultation with hospital pharmacies, to establish guidelines under which a hospital pharmacy may dispense a limited supply of a prescription drug to an individual who is no longer a patient in the hospital setting if:

(a) the individual is discharged from the hospital on the same day that the hospital pharmacy dispenses the prescription drug to the individual;

[~~(b) the prescription drug relates to the reason for which the individual was a patient at the hospital before being discharged;~~]

[~~(c)~~] (b) the class A pharmacy with which the patient has an established pharmacy-patient relationship:

(i) is not open at the time of the patient's discharge; or

(ii) unable to dispense the medication for any reason;

[~~(d)~~] (c) the hospital pharmacy dispenses a quantity of the prescription drug that is [~~the lesser of:(i)~~] not more than a 72-hour supply; [~~or~~] and

[~~(ii) an adequate amount to treat the discharged patient through the first day on which the pharmacy described in Subsection (1)(c) is open after the patient's discharge from the hospital; and~~]

[~~(e)~~] (d) dispensing the prescription drug complies with protocols established by the hospital pharmacy.

(2) A hospital pharmacy may dispense a prescription drug in accordance with rules made under Subsection (1).

Section 5. Section **58-17b-610.8** is amended to read:

58-17b-610.8. Prescription devices.

(1) The following documents from a prescribing practitioner shall be considered a prescription for purposes of dispensing of and payment for a device described in Subsection (3), if the device is prescribed or indicated by the document and the document is on file with a pharmacy:

(a) a written prescription; or

(b) a written record of a patient's:

(i) current diagnosis; or

(ii) treatment protocol.

(2) A pharmacist or pharmacy intern at a pharmacy at which a document that is

considered a prescription under Subsection (1) is on file may dispense [~~a~~] under prescription a device described in Subsection (3) to the patient in accordance with:

(a) the document that is considered a prescription under Subsection (1); and

(b) rules made by the division under Subsection (4).

(3) This section applies to:

(a) nebulizers;

(b) spacers for use with nebulizers or inhalers; and

(c) diabetic [~~testing~~] supplies.

(4) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, the Physicians Licensing Board created in Section 58-67-201, and the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201, to implement this section.

Section 6. Section **58-17b-620** is amended to read:

58-17b-620. Prescriptions issued within the public health system.

(1) As used in this section:

(a) "Department of Health" means the state Department of Health created in Section 26-1-4.

(b) "Health department" means either the Department of Health or a local health department.

(c) "Local health departments" mean the local health departments created in Title 26A, Chapter 1, Local Health Departments.

(2) When it is necessary to treat a reportable disease or non-emergency condition that has a direct impact on public health, a health department may implement the prescription procedure described in Subsection (3) for a prescription drug that is not a controlled substance for use in:

(a) a clinic; or

(b) a remote or temporary off-site location, including a triage facility established in the community, that provides:

(i) treatment for sexually transmitted infections;

(ii) fluoride treatment;

(iii) travel immunization;

(iv) preventative treatment for an individual with latent tuberculosis infection;

(v) preventative treatment for an individual at risk for an infectious disease that has a direct impact on public health when the treatment is indicated to prevent the spread of disease or to mitigate the seriousness of infection in the exposed individual; or

(vi) other treatment as defined by the Department of Health rule.

(3) In a circumstance described in Subsection (2), an individual with prescriptive authority may write a prescription for each contact, as defined in Section 26-6-2, of a patient of the individual with prescriptive authority without a face-to-face exam, if:

(a) the individual with prescriptive authority is treating the patient for a reportable disease or non-emergency condition having a direct impact on public health; and

(b) the contact's condition is the same as the patient of the individual with prescriptive authority.

(4) The following prescription procedure shall be carried out in accordance with the requirements of Subsection (5) and may be used only in the circumstances described under Subsections (2) and (3):

(a) a physician writes and signs a prescription for a prescription drug, other than a controlled substance, without the name and address of the patient and without the date the prescription is provided to the patient; and

(b) the physician authorizes a registered nurse employed by the health department to complete the prescription written under this Subsection (4) by inserting the patient's name and address, and the date the prescription is provided to the patient, in accordance with the physician's standing written orders and a written health department protocol approved by the physician and the medical director of the state Department of Health.

(5) A physician assumes responsibility for all prescriptions issued under this section in the physician's name.

(6) (a) All prescription forms to be used by a physician and health department in accordance with this section shall be serially numbered according to a numbering system assigned to that health department.

(b) All prescriptions issued shall contain all information required under this chapter and rules adopted under this chapter.

(7) Notwithstanding Sections 58-17b-302 and 58-17b-309, a nurse who is employed by

a health department and licensed under Title 31b, Nurse Practice Act, may dispense a drug to treat a sexually transmitted infection if the drug is:

(a) a prepackaged drug as defined in Section 58-17b-802;

(b) dispensed under a prescription authorized by this section;

(c) provided at a location that is described in Subsection (2)(a) or (b) and operated by the health department;

(d) provided in accordance with a dispensing standard that is issued by a physician who is employed by the health department; and

(e) if applicable, in accordance with requirements established by the division in collaboration with the board under Subsection (8).

(8) The division may make rules in collaboration with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish specific requirements regarding the dispensing of a drug under Subsection (7).