LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 220

Introduced by Gloor, 35.

Read first time January 13, 2009

Committee: Health and Human Services

A BILL

FOR AN ACT relating to pharmacy; to amend sections 28-401, 28-407, 28-414, 38-2801, 38-2802, 38-2871, 71-2413, 71-2414, 71-2416, and 71-2417, Reissue Revised Statutes of Nebraska, and sections 71-2411, 71-2412, 71-2445, 71-2447, 71-2449, and 71-2450, Revised Statutes Cumulative Supplement, 2008; to define, redefine, and eliminate terms; to change provisions relating to records of and destruction of controlled substances under the Uniform Controlled Substances Act; to change provisions relating to prescription information under the Pharmacy Practice Act; to change provisions relating to pharmacists and long-term care facilities under the Emergency Box Drug Act and the Automated Medication Systems Act; to harmonize provisions; to repeal the

original sections; and to outright repeal section 71-2415, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-401, Reissue Revised Statutes of Nebraska, is amended to read:

28-401 As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer shall mean to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of another person but shall not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2003, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness

thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health and Human Services;

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute shall mean to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe shall mean to issue a medical order;

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or

(b) of this subdivision, but shall not include devices or their components, parts, or accessories;

(12) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall

include any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized

coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

(17) Opium poppy shall mean the plant of the species Papaver somniferum L., except the seeds thereof;

(18) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(19) Person shall mean any corporation, association, partnership, limited liability company, or one or more individuals;

(20) Practitioner shall mean a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production shall include the manufacture, planting,

cultivation, or harvesting of a controlled substance;

(22) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State shall mean the State of Nebraska;

(24) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital shall have the same meaning as in section 71-419;

(26) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(28) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue shall mean a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled

Substances Act; and

(b) Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2003, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2003, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order shall mean an order for a controlled

substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order shall not include a prescription;

(33) Medical order shall mean a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription shall mean an order for a controlled substance issued by a practitioner. Prescription shall not include a chart order;

(35) Registrant shall mean any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor shall mean a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile shall mean a copy generated by a system that encodes a document or photograph into electrical

signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature shall have the definition found in section 86-621; ~~and~~

(40) Electronic transmission shall mean transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission; and~~.~~

(41) Long-term care facility shall mean an intermediate care facility, an intermediate care facility for the mentally retarded, a mental health center, a long-term care hospital, a nursing facility, and a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Sec. 2. Section 28-407, Reissue Revised Statutes of Nebraska, is amended to read:

28-407 (1) Except as otherwise provided in this section, every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a

separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a medical order issued by a practitioner authorized to prescribe.

(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within ~~an~~

~~institution~~ a long-term care facility pursuant to the provisions of the Emergency Box Drug Act.

(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.

Sec. 3. Section 28-414, Reissue Revised Statutes of Nebraska, is amended to read:

28-414 (1)(a) Except as otherwise provided in this subsection or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without the written prescription bearing the signature of a practitioner authorized to prescribe. No ~~medical order~~ prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(b) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription bearing the word "emergency" or pursuant to an oral prescription reduced to writing in accordance with subdivision (3)(b) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency".

(c) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription if the original written, signed prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (1)(c)(ii) or (1)(c)(iii) of this section;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice ~~licensed under the Health Care Facility Licensure Act or certified under Title XVIII of the federal Social Security Act, as such title existed on May 1, 2001,~~ care program and bearing the words "hospice patient";

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription for administration to a resident of a long-term care facility; and

(iv) For purposes of subdivisions (1)(c)(ii) and (1)(c)(iii) of this section, a facsimile of a written, signed prescription shall serve as the original written prescription and shall be maintained in accordance with subdivision (3)(a) of this section.

(d)(i) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed prescription.

(ii) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words "terminally ill" or "long-term care facility patient" on its face. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be

dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

(2)(a) Except as otherwise provided in this subsection or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written or oral medical order. Such medical order is valid for six months after the date of issuance. Authorization from a practitioner authorized to prescribe is required to refill a prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405. Such prescriptions shall not be refilled more than five times within six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(b) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription. The facsimile of a written, signed prescription shall serve as the original written prescription for

purposes of this subsection and shall be maintained in accordance with the provisions of subdivision (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (iii) each partial filling is dispensed within six months after the prescription was issued.

(3)(a) Prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. The practitioner filling such prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall also state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be ~~filed~~ maintained either separately from other prescriptions ~~in a single file by~~ or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such ~~files~~ records readily available to the department and law enforcement for inspection without a search warrant.

(d) All prescriptions for controlled substances listed in Schedule III, IV, or V of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and for written prescriptions, the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the owner's name and address and species of the animal.

(e) A registrant who is the owner of a controlled substance may transfer:

(i) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and

(ii) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

(f)(i) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this subdivision when the need for such substances ceases. Complete records of controlled substances destruction pursuant to this subdivision shall be maintained by the registrant for five years from the date of destruction.

(ii) When the owner is a registrant:

(A) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the federal Drug Enforcement Administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;

(B) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two ~~members of the healing arts~~ individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or

(C) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients at such hospital may be destroyed if witnessed by two ~~members of the healing arts~~ individuals credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with

subsection (4) of section 28-411.

(iii) When the owner is a patient, such owner may transfer the controlled substances to a pharmacy for immediate destruction by two ~~responsible parties acting on behalf of the pharmacy, one of whom must be a member of the healing arts.~~ individuals credentialed under the Uniform Credentialing Act and designated by the pharmacy.

(iv) When the owner is a resident of a long-term care facility or hospital, ~~the long-term care facility or hospital shall assure that controlled substances are destroyed as follows: (A) If the~~ a controlled substance ~~is~~ listed in Schedule II, ~~or~~ III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital. ~~, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and a member of the healing arts; or~~

~~(B) If the controlled substance is listed in Schedule IV or V of section 28-405, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and another responsible adult.~~

(g) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner,

the name of the patient, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription ~~files,~~ records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original written prescription or so designates in an oral prescription, such label shall also bear the name of the controlled substance.

~~(4) For purposes of this section, long-term care facility has the same meaning as long-term care hospital in section 71-422 and includes an intermediate care facility for the mentally retarded as defined in section 71-421.~~

Sec. 4. Section 38-2801, Reissue Revised Statutes of Nebraska, is amended to read:

38-2801 Sections 38-2801 to 38-28,103 and section 6 of this act shall be known and may be cited as the Pharmacy Practice Act.

Sec. 5. Section 38-2802, Reissue Revised Statutes of Nebraska, is amended to read:

38-2802 For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 and section 6 of this act apply.

Sec. 6. Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally

retarded, a mental health center, a long-term care hospital, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Sec. 7. Section 38-2871, Reissue Revised Statutes of Nebraska, is amended to read:

38-2871 Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis, except that pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the ~~face~~ record of the prescription. Transfers are subject to the following:

(1) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use a real-time, on-line data base;

(2) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription; ~~except when a single refill is transferred for emergency or traveling purposes;~~

(3) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the

information, the date of transfer, and the name of the transferring pharmacist or pharmacist intern;

(4) The receiving pharmacist or pharmacist intern indicates on the record of the transferred prescription that the prescription is transferred;

(5) The transferred prescription includes the following information:

(a) The date of issuance of the original prescription;

(b) The original number of refills authorized;

(c) The date of original dispensing;

(d) The number of valid refills remaining;

(e) The date and location of last refill; and

(f) The name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, the original prescription number, and the date of transfer; and

(6) Both the original and transferred prescriptions must be maintained by the transferring and receiving pharmacy for a period of five years from the date of transfer.

Sec. 8. Section 71-2411, Revised Statutes Cumulative Supplement, 2008, is amended to read:

71-2411 For purposes of the Emergency Box Drug Act:

(1) Authorized personnel ~~shall~~ ~~mean~~ means any medical doctor, doctor of osteopathy, registered nurse, licensed practical

nurse, nurse practitioner, pharmacist, or ~~physician's~~ physician assistant;

(2) Department ~~shall mean~~ means the Department of Health and Human Services;

(3) Drug ~~shall mean~~ means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(4) Emergency box drugs ~~shall mean~~ means drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) ~~Institution shall mean~~ Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, and a skilled nursing facility, as such terms are defined in ~~sections 71-420, 71-421, 71-423, 71-424, and 71-429;~~ the Health Care Facility Licensure Act;

~~(6) Institutional pharmacy shall mean the physical portion of an institution engaged in the compounding, dispensing, and labeling of drugs which is operating pursuant to a pharmacy license issued by the department under the Health Care Facility~~

~~Licensure Act;~~

~~(7)~~ (6) Multiple dose vial ~~shall mean~~ means any bottle in which more than one dose of a liquid drug is stored or contained; ~~and~~

~~(8) Supplying pharmacist shall mean the pharmacist in charge of an institutional pharmacy or a pharmacist who provides emergency box drugs to an institution pursuant to the Emergency Box Drug Act. Supplying pharmacist shall not include any agent or employee of the supplying pharmacist who is not a pharmacist.~~

(7) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(8) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

Sec. 9. Section 71-2412, Revised Statutes Cumulative Supplement, 2008, is amended to read:

71-2412 ~~(1) Each institutional pharmacy shall be directed by a pharmacist, referred to as the pharmacist in charge as defined in section 38-2833, who is licensed to engage in the practice of pharmacy in this state.~~

~~(2) For an institution that does not have an institutional pharmacy or during such times as an institutional pharmacy may be unattended by a pharmacist, drugs~~ Drugs may be

administered to residents of ~~the institution~~ a long-term care facility by authorized personnel of the ~~institution~~ long-term care facility from the contents of emergency boxes located within such ~~facility~~ long-term care facility if such drugs and boxes meet all of the following requirements:

~~(a)~~ (1) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying ~~pharmacist~~ pharmacy with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

~~(b)~~ (2) Emergency boxes shall be stored in a medication room or other secured area within the ~~institution.~~ long-term care facility. Only ~~the supplying pharmacist or~~ authorized personnel of the ~~institution~~ long-term care facility or the supplying pharmacy shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency box drugs;

~~(c)~~ (3) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and expiration date of each drug, and the name, address, and telephone number of the supplying ~~pharmacist;~~ pharmacy;

~~(d) The expiration date of an emergency box shall be the~~

~~earliest date of expiration of any drug contained in the box;~~

~~(e)~~ (4) All emergency boxes shall be inspected by ~~the supplying pharmacist or another~~ a pharmacist designated by the supplying ~~pharmacist~~ pharmacy at least once every thirty days or after a reported usage of any drug to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the ~~institution~~ long-term care facility for a period of ~~two~~ five years;

~~(f)~~ (5) An emergency box shall not contain ~~any~~ multiple dose vials, ~~and~~ shall not contain more than ten ~~drugs which are~~ doses of controlled substances, and shall contain no more than a total of fifty doses; and

~~(g)~~ (6) All drugs in emergency boxes shall be in the original manufacturer's or distributor's containers or shall be repackaged by the supplying ~~pharmacist~~ pharmacy and shall include the manufacturer's or distributor's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date. For purposes of the Emergency Box Drug Act, calculated expiration date has the same meaning as in subdivision (7)(b) of section 38-2884.

Sec. 10. Section 71-2413, Reissue Revised Statutes of Nebraska, is amended to read:

71-2413 (1) The supplying ~~pharmacist~~ pharmacy and the

medical director and quality assurance committee of the ~~institution~~ long-term care facility shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. ~~Such drugs shall then be approved in advance of placement in emergency boxes by the Board of Pharmacy, unless such drugs are included on a general list of drugs previously approved by the board for use in emergency boxes. The board may adopt a general list of drugs to be included in emergency boxes.~~ The supplying ~~pharmacist~~ pharmacy shall maintain a list of emergency box drugs ~~in the pharmacy of the supplying pharmacist~~ which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. The supplying ~~pharmacist~~ pharmacy shall obtain a receipt upon delivery of the emergency box to the ~~institution~~ long-term care facility signed by the director of nursing of the ~~institution~~ long-term care facility which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying ~~pharmacist~~ pharmacy for a period of ~~two~~ five years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a prescription. Whenever access to the emergency box occurs, the prescription and proof of use shall be provided to the supplying ~~pharmacist~~ pharmacy and shall be recorded on the resident's medical record by authorized personnel

of the ~~institution.~~ long-term care facility. Removal of any drug from an emergency box by authorized personnel of the ~~institution~~ long-term care facility shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature of the authorized personnel. The form shall be maintained at the ~~institution~~ long-term care facility for a period of ~~twenty-four months~~ five years from the date of removal with a copy of the form to be provided to the supplying ~~pharmacist.~~ pharmacy.

(3) Whenever an emergency box is opened, the supplying ~~pharmacist~~ pharmacy shall be notified by the charge nurse or the director of nursing of the ~~institution~~ long-term care facility within twenty-four hours and ~~the supplying pharmacist or another~~ a pharmacist designated by the supplying ~~pharmacist~~ pharmacy shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box. ~~within seventy-two hours.~~

(4) Upon the expiration of any drug in the emergency box, the supplying ~~pharmacist or another pharmacist designated by the supplying pharmacist~~ pharmacy shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box. ~~The expired drug shall be immediately destroyed within the institution by a pharmacist, and such destruction~~

~~shall be witnessed and documented by such pharmacist. If the expired drug is a controlled substance listed in Schedule II, III, IV, or V of section 28-405, it shall be destroyed pursuant to subdivision (3)(f)(iv) of section 28-414. Records pertaining to the documentation of expired drugs which are destroyed shall be maintained at the institution for a period of five years from the date of destruction with a copy of such records to be provided to the supplying pharmacist.~~ Emergency box drugs shall be considered inventory of the supplying pharmacy ~~of the supplying pharmacist~~ until such time as they are removed for administration. ~~or destruction.~~

(5) Authorized personnel of the ~~institution~~ long-term care facility shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying ~~pharmacist~~ pharmacy upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the ~~institution~~ long-term care facility shall be recorded and maintained at the ~~institution~~ long-term care facility for a period of ~~twenty-four months~~ five years from the date of examination.

(6) The supplying ~~pharmacist~~ pharmacy and the medical director and quality assurance committee of the ~~institution~~ long-term care facility shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Sec. 11. Section 71-2414, Reissue Revised Statutes of Nebraska, is amended to read:

71-2414 The department shall have (1) the authority to inspect any emergency box and (2) access to the records of the supplying ~~pharmacist and the institution~~ pharmacy and the long-term care facility for inspection. Refusal to allow the department to inspect an emergency box or to have access to records shall be grounds for a disciplinary action against the supplying ~~pharmacist or the license of the institution.~~ pharmacy or the license of the long-term care facility.

Sec. 12. Section 71-2416, Reissue Revised Statutes of Nebraska, is amended to read:

71-2416 (1) The department may limit, suspend, or revoke the authority of a supplying ~~pharmacist~~ pharmacy to maintain emergency boxes in ~~an institution~~ a long-term care facility for any violation of the Emergency Box Drug Act. The department may limit, suspend, or revoke the authority of ~~an institution~~ a long-term care facility to maintain an emergency box for any violation of the act. The taking of such action against the supplying ~~pharmacist or institution~~ pharmacy or the long-term care facility or both shall not prohibit the department from taking other disciplinary actions against the supplying ~~pharmacist or the institution.~~ pharmacy or the long-term care facility.

(2) If the department determines to limit, suspend, or revoke the authority of a supplying ~~pharmacist~~ pharmacy to maintain emergency boxes in ~~an institution~~ a long-term care facility or to limit, suspend, or revoke the authority of ~~an institution~~ a

long-term care facility to maintain an emergency box, it shall send to the supplying ~~pharmacist or institution~~ pharmacy or the long-term care facility a notice of such determination. The notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. The limitation, suspension, or revocation shall become final thirty days after receipt of the notice unless the supplying ~~pharmacist or institution,~~ pharmacy or the long-term care facility, within such thirty-day period, requests a hearing in writing. The supplying ~~pharmacist or institution~~ pharmacy or the long-term care facility shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed, set aside, or modified, and a copy of such decision setting forth the findings of facts and the particular reasons on which it is based shall be sent to the supplying ~~pharmacist or institution.~~ pharmacy or the long-term care facility. The parties may appeal the final decision in accordance with the Administrative Procedure Act. Witnesses may be subpoenaed by either party and shall be allowed a fee at the statutory rate.

(3) The procedure governing hearings authorized by the Emergency Box Drug Act shall be in accordance with rules and regulations adopted and promulgated by the department.

(4) The supplying ~~pharmacist or institution~~ pharmacy or the long-term care facility shall not maintain an emergency box after ~~his, her, or~~ its authority to maintain such box has been revoked or during the time such authority has been suspended. If the authority is suspended, the suspension shall be for a definite period of time. Such authority shall be automatically reinstated on the expiration of such period. If such authority has been revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application for reinstatement of authority may be made to the department. ~~Any such application for reinstatement by a supplying pharmacist may not be received by the department unless accompanied by a written recommendation of reinstatement by the Board of Pharmacy.~~

(5) Any person who commits any of the acts prohibited by the act shall be guilty of a Class II misdemeanor. The department may maintain an action in the name of the state against any person for maintaining an emergency box in violation of the act. Each day a violation continues shall constitute a separate violation.

Sec. 13. Section 71-2417, Reissue Revised Statutes of Nebraska, is amended to read:

71-2417 Any emergency box containing a controlled substance listed in section 28-405 and maintained at ~~an institution~~ a long-term care facility shall be exempt from the provisions of subdivision (3)(g) of section 28-414.

Sec. 14. Section 71-2445, Revised Statutes Cumulative

Supplement, 2008, is amended to read:

71-2445 For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed ~~before December 1, 2008, under the Uniform Licensing Law and on or after December 1, 2008,~~ under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated medication system may only be used in conjunction with the provision of pharmacist care;

(3) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded,

a mental health center, a long-term care hospital, a nursing facility, and a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

~~(5)~~ (6) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

~~(6)~~ (7) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

~~(7)~~ (8) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

~~(8)~~ (9) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

~~(9)~~ (10) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of

pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

~~(10)~~ (11) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(12) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

~~(11)~~ (13) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

~~(12)~~ (14) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

Sec. 15. Section 71-2447, Revised Statutes Cumulative Supplement, 2008, is amended to read:

71-2447 Any hospital, long-term care facility, or pharmacy that uses an automated medication system shall develop, maintain, and comply with policies and procedures developed in consultation with the pharmacist responsible for pharmacist care for that hospital, long-term care facility, or pharmacy. At a minimum, the policies and procedures shall address the following:

(1) The description and location within the hospital, long-term care facility, or pharmacy of the automated medication system or equipment being used;

(2) The name of the individual or individuals responsible for implementation of and compliance with the policies and procedures;

(3) Medication access and information access procedures;

(4) Security of inventory and confidentiality of records in compliance with state and federal laws, rules, and regulations;

(5) A description of how and by whom the automated medication system is being utilized, including processes for filling, verifying, dispensing, and distributing medications;

(6) Staff education and training;

(7) Quality assurance and quality improvement programs and processes;

(8) Inoperability or emergency downtime procedures;

(9) Periodic system maintenance; and

(10) Medication security and controls.

Sec. 16. Section 71-2449, Revised Statutes Cumulative

Supplement, 2008, is amended to read:

71-2449 (1) An automated medication distribution machine:

(a) Is subject to the requirements of section 71-2447; and

(b) May be operated in a hospital or long-term care facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital or long-term care facility shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Sec. 17. Section 71-2450, Revised Statutes Cumulative Supplement, 2008, is amended to read:

71-2450 A pharmacist providing pharmacist remote order entry shall:

(1) Be located within the United States;

(2) Maintain adequate security and privacy in accordance with state and federal laws, rules, and regulations;

(3) Be linked to one or more hospitals, long-term care facilities, or pharmacies for which services are provided via

computer link, video link, audio link, or facsimile transmission;

(4) Have access to each patient's medical information necessary to perform via computer link, video link, or facsimile transmission a prospective drug utilization review as specified ~~before December 1, 2008, in section 71-1,147.35 and on or after December 1, 2008,~~ in section 38-2869; and

(5) Be employed by or have a contractual agreement to provide such services with the hospital or pharmacy where the patient is located.

Sec. 18. Original sections 28-401, 28-407, 28-414, 38-2801, 38-2802, 38-2871, 71-2413, 71-2414, 71-2416, and 71-2417, Reissue Revised Statutes of Nebraska, and sections 71-2411, 71-2412, 71-2445, 71-2447, 71-2449, and 71-2450, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 19. The following section is outright repealed: Section 71-2415, Reissue Revised Statutes of Nebraska.