LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 866

Introduced by Howard, 9; Gloor, 35.

Read first time January 11, 2010

Committee: Health and Human Services

A BILL

FOR AN ACT relating to the Pharmacy Practice Act; to amend sections 38-2817, 71-436, and 71-7435, Reissue Revised Statutes of Nebraska, and sections 38-2801, 38-2802, 38-2850, 38-2867, and 38-2869, Revised Statutes Supplement, 2009; to define and redefine terms; to provide for a dispensing practitioner permit; to change provisions relating to an exception to the practice of pharmacy; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 38-2801, Revised Statutes Supplement, 2009, is amended to read:

38-2801 Sections 38-2801 to 38-28,103 and sections 4 and 7 of this act shall be known and may be cited as the Pharmacy Practice Act.

Sec. 2. Section 38-2802, Revised Statutes Supplement, 2009, 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 4 of this act apply.

Sec. 3. Section 38-2817, Reissue Revised Statutes of Nebraska, is amended to read:

38-2817 (1) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(2) Dispensing includes (a) ~~dispensing incident to practice,~~ ~~(b)~~ dispensing pursuant to a delegated dispensing permit or a dispensing practitioner permit, ~~(c)~~ (b) dispensing pursuant to a medical order, and ~~(d)~~ (c) any transfer of a prescription drug or device to a patient or caregiver other than by administering.

Sec. 4. Drug sample means a unit of a prescription drug (1) intended to promote the sale of the drug and initiate drug

therapy, (2) not intended to be sold or to maintain drug therapy, and (3) labeled by the manufacturer, packager, or distributor as "sample, not for sale", "professional sample, not for sale", or words or notations of similar import.

Sec. 5. Section 38-2850, Revised Statutes Supplement, 2009, is amended to read:

38-2850 As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a ~~pharmacy license.~~ dispensing practitioner permit issued pursuant to section 7 of this act. The practice of pharmacy shall not be construed to include:

~~(1) Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;~~

~~(2) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner regularly engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;~~

~~(3) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;~~

~~(4) Medical representatives, detail persons, or persons~~

~~known by some name of like import, but only to the extent of permitting the relating of~~ (1) Representatives of a manufacturer or of a wholesale drug distributor but only to the extent of distributing drug samples or pharmaceutical information to health care professionals;

~~(5)~~ (2) Licensed veterinarians ~~practicing~~ dispensing drugs or devices within the scope of their profession;

~~(6) Certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;~~

~~(7) Hospitals engaged in the compounding and dispensing of drugs and devices pursuant to chart orders for persons registered as patients and within the confines of the hospital, except that if a hospital engages in such compounding and dispensing for persons not registered as patients and within the confines of the hospital, such hospital shall obtain a pharmacy license or delegated dispensing permit;~~

(3) Practitioners who provide drug samples within the scope of their profession to their own patients;

~~(8)~~ (4) Optometrists who ~~prescribe or~~ dispense eyeglasses or nontherapeutic contact lenses to their own patients;

~~(9) Registered nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or~~

~~device containers or properly labeled prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;~~

~~(10)~~ (5) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs;

~~(11)~~ (6) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian; and

~~(12) A pharmacy~~ (7) A business or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users.

Sec. 6. Section 38-2867, Revised Statutes Supplement, 2009, is amended to read:

38-2867 (1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision ~~(12)~~ (7) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, no

person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a ~~pharmacy~~ ~~license~~ dispensing practitioner permit shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision ~~(12)~~ (7) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a ~~pharmacy~~ ~~license~~ dispensing practitioner permit to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation

of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Sec. 7. The department may issue a dispensing practitioner permit to a practitioner who may compound and dispense prescription drugs or devices to his or her own patients within the scope of his or her practice. A practitioner with a dispensing practitioner permit shall comply with all prospective drug utilization review, patient counseling, labeling, storage, recordkeeping, and physical plant standards as set forth in rules and regulations of the department. The facility in which compounding and dispensing of prescription drugs or devices by the dispensing practitioner occurs shall be subject to inspection by a pharmacy inspector. The department may set fees for dispensing practitioner permits. A dispensing practitioner shall not employ pharmacist interns or pharmacy technicians for the provision of services pursuant to a dispensing practitioner permit. A dispensing practitioner shall not delegate compounding and dispensing of prescription drugs or devices to any other person.

Sec. 8. Section 38-2869, Revised Statutes Supplement,

2009, is amended to read:

38-2869 (1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

(i) Therapeutic duplication;

(ii) Drug-disease contraindications;

(iii) Drug-drug interactions;

(iv) Incorrect drug dosage or duration of drug treatment;

(v) Drug-allergy interactions; and

(vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist relevant to the

patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

(i) The name and description of the prescribed drug or device;

(ii) The route of administration, dosage form, dose, and duration of therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;

(iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:

(i) The patient or caregiver refuses patient counseling;

(ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;

(iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant;

(iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless

he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral prescription or in writing on the face of a written prescription, including any prescription which is received by facsimile or electronic transmission. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing practitioner; or

(v) A medical gas or a medical gas device is administered, dispensed, or distributed by a person described in subdivision ~~(12)~~ (7) of section 38-2850.

Sec. 9. Section 71-436, Reissue Revised Statutes of Nebraska, is amended to read:

71-436 (1) An applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics.

(2) If compounding and dispensing of drugs or devices occurs in a hospital pursuant to a prescription for persons not

registered as patients and not residing within the confines of the hospital, the hospital shall obtain a pharmacy license and be subject to all statutes, rules, and regulations pertaining to the practice of pharmacy.

~~(2)~~ (3) The department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed. The department may inspect any of the locations that are covered by the license. If an entity is licensed in multiple types of licensure for one location, the department shall conduct all required inspections simultaneously for all types of licensure when requested by the entity.

Sec. 10. Section 71-7435, Reissue Revised Statutes of Nebraska, is amended to read:

71-7435 Drug sample means a unit of a prescription drug (1) intended to promote the sale of the drug and initiate drug therapy, (2) ~~and~~ not intended to be sold or to maintain drug therapy, and (3) labeled by the manufacturer, packager, or distributor as "sample, not for sale", "professional sample, not for sale", or words or notations of similar import.

Sec. 11. Original sections 38-2817, 71-436, and 71-7435, Reissue Revised Statutes of Nebraska, and sections 38-2801, 38-2802, 38-2850, 38-2867, and 38-2869, Revised Statutes Supplement, 2009, are repealed.