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LEGISLATURE OF NEBRASKA

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FIRST SESSION

LEGISLATIVE BILL 583

Introduced by Murman, 38; Clements, 2; Dorn, 30; Gragert, 40; Hansen, B., 16; Kolterman, 24.

Read first time January 19, 2021

Committee: Health and Human Services

A BILL FOR AN ACT relating to prescriptions; to amend sections 28-414, 28-414.01, 38-101, 38-2870, and 38-2891, Revised Statutes Cumulative Supplement, 2020; to define a term; to require electronic issuance of prescriptions for controlled substances; to provide exceptions; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

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Section 1. Section 28-414, Revised Statutes Cumulative Supplement, 2020, is amended to read:

28-414 (1) Except as otherwise provided in this section 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 a prescription from a practitioner authorized to prescribe. Beginning January 1, 2022, all such prescriptions shall be subject to section 4 of this act. No 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.

(2) A prescription for controlled substances listed in Schedule II of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) prescribing practitioner's name and address, and (i) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (i) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) In emergency situations, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an oral

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prescription reduced to writing in accordance with subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency".

(b) For purposes of this section, emergency situation means a situation in which a prescribing practitioner determines that (i) immediate administration of the controlled substance is necessary for proper treatment of the patient, (ii) no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance listed in Schedule II of section 28-405, and (iii) it is not reasonably possible for the prescribing practitioner to provide a signed, written or electronic prescription to be presented to the person dispensing the controlled substance prior to dispensing.

(4)(a) 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 paper prescription if the original written, signed paper prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (a)(ii) or (iii) of this subsection;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper 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 care program and bearing the words "hospice patient"; and

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

(b) For purposes of subdivisions (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall

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serve as the original written prescription and shall be maintained in accordance with subsection (1) of section 28-414.03.

(5)(a) 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 or in the electronic record. The remaining portion of the prescription may be filled no later than thirty days after the date on which the prescription is written. 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 paper prescription or electronic prescription.

(b) 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 or in the electronic record. 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

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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.

Sec. 2. Section 28-414.01, Revised Statutes Cumulative Supplement, 2020, is amended to read:

28-414.01 (1) Except as otherwise provided in this section 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, oral, or electronic medical order. Such medical order is valid for 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.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, including pro re nata or PRN refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. Beginning January 1, 2022, all such prescriptions shall be subject to section 4 of this act. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements

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of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) A pharmacist who is exercising reasonable care and who has obtained patient consent may do the following:

(i) Change the quantity of a drug prescribed if:

(A) The prescribed quantity or package size is not commercially available; or

(B) The change in quantity is related to a change in dosage form;

(ii) Change the dosage form of the prescription if it is in the best interest of the patient and if the directions for use are also modified to equate to an equivalent amount of drug dispensed as prescribed;

(iii) Dispense multiple months' supply of a drug if a prescription is written with sufficient refills; and

(iv) Substitute any chemically equivalent drug product for a prescribed drug to comply with a drug formulary which is covered by the patient's health insurance plan unless the prescribing practitioner specifies "no substitution", "dispense as written", or "D.A.W." to indicate that substitution is not permitted. If a pharmacist substitutes any chemically equivalent drug product as permitted under this subdivision, the pharmacist shall provide notice to the prescribing practitioner or the prescribing practitioner's designee. If drug product selection occurs involving a generic substitution, the drug product selection shall comply with section 38-28,111.

(b) A pharmacist who adapts a prescription in accordance with this subsection shall document the adaptation in the patient's pharmacy record.

(4) 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 paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with

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subsection (2) of section 28-414.03.

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

Sec. 3. Section 38-101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

38-101 Sections 38-101 to 38-1,145 and section 4 of this act and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

(1) The Advanced Practice Registered Nurse Practice Act;

(2) The Alcohol and Drug Counseling Practice Act;

(3) The Athletic Training Practice Act;

(4) The Audiology and Speech-Language Pathology Practice Act;

(5) The Certified Nurse Midwifery Practice Act;

(6) The Certified Registered Nurse Anesthetist Practice Act;

(7) The Chiropractic Practice Act;

(8) The Clinical Nurse Specialist Practice Act;

(9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(10) The Dentistry Practice Act;

(11) The Dialysis Patient Care Technician Registration Act;

(12) The Emergency Medical Services Practice Act;

(13) The Environmental Health Specialists Practice Act;

(14) The Funeral Directing and Embalming Practice Act;

(15) The Genetic Counseling Practice Act;

(16) The Hearing Instrument Specialists Practice Act;

(17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;

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(18) The Massage Therapy Practice Act;

(19) The Medical Nutrition Therapy Practice Act;

(20) The Medical Radiography Practice Act;

(21) The Medicine and Surgery Practice Act;

(22) The Mental Health Practice Act;

(23) The Nurse Practice Act;

(24) The Nurse Practitioner Practice Act;

(25) The Nursing Home Administrator Practice Act;

(26) The Occupational Therapy Practice Act;

(27) The Optometry Practice Act;

(28) The Perfusion Practice Act;

(29) The Pharmacy Practice Act;

(30) The Physical Therapy Practice Act;

(31) The Podiatry Practice Act;

(32) The Psychology Practice Act;

(33) The Respiratory Care Practice Act;

(34) The Surgical First Assistant Practice Act;

(35) The Veterinary Medicine and Surgery Practice Act; and

(36) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,145 and section 4 of this act and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (35) of this section, to articles within Chapter 38.

Sec. 4. (1) For purposes of this section, prescriber means a health care practitioner authorized to prescribe controlled substances in the practice for which credentialed under the Uniform Credentialing Act.

(2) Except as otherwise provided in subsection (3) of this section, no prescriber shall, in this state, issue any prescription as defined in section 38-2840 for a controlled substance as defined in section 28-401

unless such prescription is issued (a) using electronic prescription technology, (b) from the prescriber issuing the prescription to a pharmacy, and (c) in accordance with all requirements of state law and the rules and regulations adopted and promulgated pursuant to such state law. The prescriber's software vendor responsible for such transmission shall, for each controlled substance prescription that is transmitted electronically, report such prescription to the statewide health information exchange described in section 71-2455 in a format specified by the statewide health information exchange.

(3) The requirements of subsection (2) of this section shall not apply to prescriptions:

(a) Issued by veterinarians;

(b) Issued in circumstances where electronic prescribing is not available due to temporary technological or electrical failure, including prescriptions issued to out-of-state pharmacies and mail-order prescriptions;

(c) Issued by a prescriber to be dispensed by a pharmacy located outside the state as set forth in rules and regulations adopted and promulgated by the Department of Health and Human Services;

(d) Issued when the prescriber and the dispenser are the same entity;

(e) Issued that include elements that are not supported by the Prescriber/Pharmacist Interface SCRIPT Standard of the National Council for Prescription Drug Programs as such standard existed on January 1, 2021;

(f) Issued for a drug for which the federal Food and Drug Administration requires the prescription to contain certain elements that are not able to be accomplished with electronic prescribing;

(g) Issued for dispensing a non-patient-specific prescription which is (i) an approved protocol for drug therapy or (ii) in response to a public health emergency;

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(h) Issued for a drug for purposes of a research protocol;

(i) Issued under circumstances in which, notwithstanding the prescriber's ability to make an electronic prescription as required by this section, such prescriber reasonably determines (i) that it would be impractical for the patient to obtain substances prescribed by electronic prescription in a timely manner and (ii) that such delay would adversely impact the patient's medical condition; or

(j) Issued for drugs requiring compounding.

(4) A pharmacist who receives a written, oral, or faxed prescription is not required to verify that the prescription falls under one of the exceptions listed in subsection (3) of this section. A pharmacist may continue to dispense medication from any otherwise valid written, oral, or faxed prescription consistent with the law and rules and regulations as they existed prior to January 1, 2022.

(5) A violation of this section shall not be grounds for disciplinary action under the Uniform Credentialing Act.

Sec. 5. Section 38-2870, Revised Statutes Cumulative Supplement, 2020, is amended to read:

38-2870 (1) Beginning January 1, 2022, prescriptions for controlled substances listed in section 28-405 shall be subject to section 4 of this act.

(2)~~(1)~~ All medical orders shall be written, oral, or electronic and shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(3) ~~(2)~~ Prescription drugs or devices may only be dispensed by a

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pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section 38-2850. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. The Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense, compound, administer, or prepare for administration any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(4) ~~(3)~~ Except as otherwise provided in sections 28-414 and 28-414.01, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern and an authorized refill to a pharmacist, pharmacist intern, or pharmacy technician by the following means: (a) In writing, (b) orally, (c) by facsimile transmission of a written medical order or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile transmission of a written medical order or electronic transmission of a medical order which is not signed by the practitioner. Such an unsigned medical order shall be verified with the practitioner.

(5)(a) ~~(4)(a)~~ Except as otherwise provided in sections 28-414 and 28-414.01, any medical order transmitted by facsimile or electronic transmission shall:

(i) Be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice; and any authorized refill transmitted by facsimile or electronic transmission shall be transmitted by the practitioner or the practitioner's agent directly to a pharmacist, pharmacist intern, or pharmacy technician. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by

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the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy;

(ii) Identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law; and

(iii) Serve as the original medical order if all other requirements of this subsection are satisfied.

(b) Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature for legend drugs which are not controlled substances or a digital signature for legend drugs which are controlled substances.

(6) ~~(5)~~ The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

(7) ~~(6)~~ The quantity of drug indicated in a medical order for a resident of a long-term care facility shall be sixty days unless otherwise limited by the prescribing practitioner.

Sec. 6. Section 38-2891, Revised Statutes Cumulative Supplement, 2020, is amended to read:

38-2891 (1) A pharmacy technician shall only perform tasks which do not require the professional judgment of a pharmacist and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

(a) Receiving oral medical orders from a practitioner or his or her agent except as otherwise provided in subsection (4) ~~(3)~~ of section 38-2870;

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(b) Providing patient counseling;

(c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;

(d) Supervising or verifying the tasks and functions of pharmacy technicians;

(e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 38-2869;

(f) Releasing any confidential information maintained by the pharmacy;

(g) Performing any professional consultations; and

(h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(3) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Sec. 7. This act becomes operative on January 1, 2022.

Sec. 8. Original sections 28-414, 28-414.01, 38-101, 38-2870, and 38-2891, Revised Statutes Cumulative Supplement, 2020, are repealed.