SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 92

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO PROFESSIONAL LICENSURE; AMENDING AND ENACTING SECTIONS OF THE PHARMACY ACT TO EXPAND PHARMACIST SCOPE OF PRACTICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-11-2 NMSA 1978 (being Laws 1969, Chapter 29, Section 2, as amended) is amended to read:

"61-11-2. DEFINITIONS.--As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing, assembling, packaging or labeling a drug or device as the

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result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to other persons authorized by law to receive the information, regardless of whether the information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home, retirement care, mental care or other facility that provides

extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "RX only";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician.";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or device other than by administering or dispensing;

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K. "drug" means:

(1) an article recognized as a drug in an official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or a function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

(6) drug-drug interactions;

(7) adverse drug reactions; and

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(8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to a drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by a state, territory or possession of the United States who, within the limits of the person's license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and

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marketing of the drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means nonnarcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "outsourcing facility" means a facility at one geographic location or address that engages in the compounding of sterile drugs, is licensed by the board and, in accordance with board rules, is currently registered with the United States food and drug administration as an outsourcing facility;

U. "patient counseling" means the oral communication by the pharmacist of information to a patient or the patient's agent or caregiver regarding proper use of a drug or device;

V. "person" means an individual, corporation, partnership, association or other legal entity;

W. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug

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therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

X. "pharmacist" means a person who is licensed as a pharmacist in this state;

Y. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Z. "pharmacy" means a place of business licensed by the board where drugs are compounded or dispensed and pharmaceutical care is provided;

AA. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

BB. "pharmacy technician" means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

CC. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering or prescribing of

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dangerous drug therapy, devices or supplies for prescribed drug therapy for health conditions, including diabetes; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; the ordering, performing and interpreting of tests provided for in Section 2 of this 2023 act that are authorized by the federal food and drug administration and other tests waived pursuant to the federal Clinical Laboratory Improvement Amendments of 1988, as amended; and the maintenance of proper records consistent with the standard of care in general medical practice;

DD. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the licensed practitioner's agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

EE. "repackager" means a person that repackages a drug, including a medicinal gas, and that, in accordance with board rules, has a valid registration as a drug establishment with the United States food and drug administration;

FF. "significant adverse drug event" means a

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drug-related incident that may result in harm, injury or death to the patient;

GG. "third-party logistics provider" means a person that provides or coordinates warehousing or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor or dispenser of a product but which person does not take ownership of the product nor have responsibility to direct the sale or disposition of the product; and

HH. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including own-label distributors, private-label distributors, jobbers, brokers, manufacturers' warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution."

SECTION 2. A new section of the Pharmacy Act is enacted to read:

"[NEW MATERIAL] TESTING, SCREENING AND TREATMENT OF HEALTH CONDITIONS.--

A. Pursuant to a board-approved protocol approved by the New Mexico medical board, a pharmacist may order, test, screen, treat and provide preventative services for health conditions or situations that include:

(1) influenza;

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(2) group A streptococcus pharyngitis;

(3) SARS-COV-2;

(4) uncomplicated urinary tract infection;

(5) human immunodeficiency virus, limited to the provision of pre-exposure prophylaxis and post-exposure prophylaxis; and

(6) other emerging and existing public health threats identified by the board or department of health during civil or public health emergencies.

B. A pharmacist who orders, tests, screens or treats for health conditions or situations pursuant to this section may use any test that may guide clinical decision making, including tests waived pursuant to the federal Clinical Laboratory Improvement Amendments of 1988, as amended, the federal rules adopted thereunder or any established screening procedure that can safely be performed by a pharmacist.

C. A pharmacist may delegate the administrative and technical tasks of performing a test waived by the federal Clinical Laboratory Improvement Amendments of 1988, as amended, to a pharmacist intern or pharmacy technician acting under the supervision of the pharmacist."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.