

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2609

By Committee on Health and Human Services

2-11

1 AN ACT concerning the pharmacy act of the state of Kansas; relating to
2 the practice of pharmacy; filling and refilling of prescriptions;
3 amending K.S.A. 65-1626a and K.S.A. 2013 Supp. 65-1637b and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 65-1626a is hereby amended to read as follows: 65-
8 1626a. (a) For the purpose of the pharmacy act of the state of Kansas, the
9 following persons shall be deemed to be engaged in the practice of
10 pharmacy:

11 (1) Persons who publicly profess to be a pharmacist, or publicly
12 profess to assume the duties incident to being a pharmacist and their
13 knowledge of drugs or drug actions, or both; *and*

14 (2) persons who attach to their name any words or abbreviation
15 indicating that they are a pharmacist licensed to practice pharmacy in
16 Kansas.

17 (b) **(1)** "Practice of pharmacy" means the interpretation and
18 evaluation of prescription orders; the compounding, dispensing and
19 labeling of drugs and devices pursuant to prescription orders; the
20 administering of vaccine pursuant to a vaccination protocol; the
21 participation in drug selection according to state law and participation in
22 drug utilization reviews; the proper and safe storage of prescription drugs
23 and prescription devices and the maintenance of proper records thereof in
24 accordance with law; consultation with patients and other health care
25 practitioners about the safe and effective use of prescription drugs and
26 prescription devices; *performance of individual patient collaborative drug*
27 *therapy management pursuant to a written collaborative practice protocol*
28 **agreement with one or more prescribers physicians** who have an
29 established physician-patient relationship; and participation in the offering
30 or performing of those acts, services, operations or transactions necessary
31 in the conduct, operation, management and control of a pharmacy. Nothing
32 in this ~~subsection~~ section shall be construed to add any additional
33 requirements for registration or for a permit under the pharmacy act of the
34 state of Kansas or for approval under subsection (g) of K.S.A. 65-1643,
35 and amendments thereto, or to prevent persons other than pharmacists
36 from engaging in drug utilization review, or to require persons lawfully in

1 possession of prescription drugs or prescription devices to meet any
2 storage or record keeping requirements except such storage and record
3 keeping requirements as may be otherwise provided by law or to affect any
4 person consulting with a health care practitioner about the safe and
5 effective use of prescription drugs or prescription devices.

6 **(2) "Collaborative drug therapy management" means a practice**
7 **of pharmacy where a pharmacist performs certain pharmaceutical-**
8 **related patient care functions for a specific patient which have been**
9 **delegated to the pharmacist by a physician through a collaborative**
10 **practice agreement. A physician who enters into a collaborative**
11 **practice agreement is responsible for the care of the patient following**
12 **initial diagnosis and assessment and for the direction and supervision**
13 **of the pharmacist throughout the collaborative drug therapy**
14 **management process. Nothing in this subsection shall be construed to**
15 **permit a pharmacist to alter a physician's orders or directions,**
16 **diagnose or treat any disease, independently prescribe drugs or**
17 **independently practice medicine and surgery.**

18 **(3) "Collaborative practice agreement" means a written**
19 **agreement or protocol between one or more pharmacists and one or**
20 **more physicians that provides for collaborative drug therapy**
21 **management. Such collaborative practice agreement shall contain**
22 **certain specified conditions or limitations pursuant to the**
23 **collaborating physician's order, standing order, delegation or protocol.**
24 **A collaborative practice agreement shall be: (A) Consistent with the**
25 **normal and customary specialty, competence and lawful practice of**
26 **the physician; and (B) appropriate to the pharmacist's training and**
27 **experience.**

28 **(4) "Physician" means a person licensed to practice medicine and**
29 **surgery in this state.**

30 Sec. 2. K.S.A. 2013 Supp. 65-1637b is hereby amended to read as
31 follows: 65-1637b. (a) The pharmacist shall exercise professional
32 judgment regarding the accuracy, validity and authenticity of any
33 prescription order consistent with federal and state laws and rules and
34 regulations. A pharmacist shall not dispense a prescription drug if the
35 pharmacist, in the exercise of professional judgment, determines that the
36 prescription is not a valid prescription order.

37 (b) The prescriber may authorize an agent to transmit to the pharmacy
38 a prescription order orally, by facsimile transmission or by electronic
39 transmission provided that the first and last names of the transmitting
40 agent are included in the order.

41 (c) (1) A new written or electronically prepared and transmitted
42 prescription order shall be manually or electronically signed by the
43 prescriber. If transmitted by the prescriber's agent, the first and last names

1 of the transmitting agent shall be included in the order.

2 (2) If the prescription is for a controlled substance and is written or
3 printed from an electronic prescription application, the prescription shall
4 be manually signed by the prescriber prior to delivery of the prescription
5 to the patient or prior to facsimile transmission of the prescription to the
6 pharmacy.

7 (3) An electronically prepared prescription shall not be electronically
8 transmitted to the pharmacy if the prescription has been printed prior to
9 electronic transmission. An electronically prepared and transmitted
10 prescription which is printed following electronic transmission shall be
11 clearly labeled as a copy, not valid for dispensing.

12 (4) In consultation with industry, the state board of pharmacy shall
13 conduct a study on the issues of electronic transmission of prior
14 authorizations and step therapy protocols. The report on the results of such
15 study shall be completed and submitted to the legislature no later than
16 January 15, 2013.

17 (5) The board is hereby authorized to conduct pilot projects related to
18 any new technology implementation when deemed necessary and
19 practicable, except that no state moneys shall be expended for such
20 purpose.

21 (d) An authorization to refill a prescription order or to renew or
22 continue an existing drug therapy may be transmitted to a pharmacist
23 through oral communication, in writing, by facsimile transmission or by
24 electronic transmission initiated by or directed by the prescriber.

25 (1) If the transmission is completed by the prescriber's agent, and the
26 first and last names of the transmitting agent are included in the order, the
27 prescriber's signature is not required on the fax or alternate electronic
28 transmission.

29 (2) If the refill order or renewal order differs in any manner from the
30 original order, such as a change of the drug strength, dosage form or
31 directions for use, the prescriber shall sign the order as provided by
32 paragraph (1).

33 (e) Regardless of the means of transmission to a pharmacy, only a
34 pharmacist or a pharmacist intern shall be authorized to receive a new
35 prescription order from a prescriber or transmitting agent. A pharmacist, a
36 pharmacist intern or a registered pharmacy technician may receive a refill
37 or renewal order from a prescriber or transmitting agent if such registered
38 pharmacy technician's supervising pharmacist has authorized that function.

39 (f) A refill is one or more dispensings of a prescription drug or device
40 that results in the patient's receipt of the quantity authorized by the
41 prescriber for a single fill as indicated on the prescription order.

42 ~~(1) A prescription for a prescription drug or device that is not a~~
43 ~~controlled substance may authorize no more than 12 refills within 18~~

1 months following the date on which the prescription is issued.

2 (2) A prescription for a schedule III, IV or V controlled substance
3 may authorize no more than five refills within six months following the
4 date on which the prescription is issued.

5 (g) Prescriptions shall only be filled or refilled in accordance with the
6 following requirements:

7 (1) All prescriptions shall be filled in strict conformity with any
8 directions of the prescriber, except that a pharmacist who receives a
9 prescription order for a brand name drug product may exercise brand
10 exchange with a view toward achieving a lesser cost to the purchaser
11 unless:

12 (A) The prescriber, in the case of a prescription ~~manually or~~
13 electronically signed by the prescriber ~~and prepared on a form containing~~
14 ~~two signature lines, signs the signature line following, includes~~ the
15 statement "dispense as written" *on the prescription*;

16 (B) the prescriber, in the case of a written prescription signed by the
17 prescriber, writes in the prescriber's own handwriting "dispense as written"
18 on the prescription;

19 (C) the prescriber, in the case of a prescription other than one in
20 writing signed by the prescriber, expressly indicates the prescription is to
21 be dispensed as communicated; or

22 (D) the federal food and drug administration has determined that a
23 drug product of the same generic name is not bioequivalent to the
24 prescribed brand name prescription medication.

25 (h) If a prescription order contains a statement that during any
26 particular time the prescription may be refilled at will, there shall be no
27 limitation as to the number of times that such prescription may be refilled
28 except that it may not be refilled after the expiration of the time specified
29 or one year after the prescription was originally issued, whichever occurs
30 first.

31 (i) Prescription orders shall be recorded in writing by the pharmacist
32 and the record so made by the pharmacist shall constitute the original
33 prescription to be dispensed by the pharmacist. This record, if telephoned
34 by other than the prescriber, shall bear the *full* name of the person so
35 telephoning. Nothing in this section shall be construed as altering or
36 affecting in any way laws of this state or any federal act requiring a written
37 prescription order.

38 (j) (1) Except as provided in paragraph (2), no prescription shall be
39 refilled unless authorized by the prescriber either in the original
40 prescription or by oral order which is reduced promptly to writing and
41 filled by the pharmacist.

42 (2) A pharmacist may refill a prescription order issued on or after the
43 effective date of this act for any prescription drug except a drug listed on

1 schedule II of the uniform controlled substances act or a narcotic drug
2 listed on any schedule of the uniform controlled substances act without the
3 prescriber's authorization when all reasonable efforts to contact the
4 prescriber have failed and when, in the pharmacist's professional
5 judgment, continuation of the medication is necessary for the patient's
6 health, safety and welfare. Such prescription refill shall only be in an
7 amount judged by the pharmacist to be sufficient to maintain the patient
8 until the prescriber can be contacted, but in no event shall a refill under
9 this paragraph be more than a seven day supply or one package of the
10 drug. However, if the prescriber states on a prescription that there shall be
11 no emergency refilling of that prescription, then the pharmacist shall not
12 dispense any emergency medication pursuant to that prescription. A
13 pharmacist who refills a prescription order under this subsection (j)(2)
14 shall contact the prescriber of the prescription order on the next business
15 day subsequent to the refill or as soon thereafter as possible. No
16 pharmacist shall be required to refill any prescription order under this
17 subsection (j)(2). A prescriber shall not be subject to liability for any
18 damages resulting from the refilling of a prescription order by a
19 pharmacist under this subsection (j)(2) unless such damages are
20 occasioned by the gross negligence or willful or wanton acts or omissions
21 by the prescriber.

22 (k) If any prescription order contains a provision that the prescription
23 may be refilled a specific number of times within or during any particular
24 period, such prescription shall not be refilled except in strict conformity
25 with such requirements.

26 (l) Any pharmacist who exercises brand exchange and dispenses a
27 less expensive drug product shall not charge the purchaser more than the
28 regular and customary retail price for the dispensed drug.

29 (m) Nothing contained in this section shall be construed as preventing
30 a pharmacist from refusing to fill or refill any prescription if in the
31 pharmacist's professional judgment and discretion such pharmacist is of
32 the opinion that it should not be filled or refilled.

33 **New Sec. 3. (a) Not later than 90 days after the effective date of this**
34 **act, the state board of pharmacy and the state board of healing arts**
35 **shall appoint a seven-member committee to be known as the**
36 **collaborative drug therapy management advisory committee for the**
37 **purpose of promoting consistent regulation and to enhance**
38 **coordination among such boards with jurisdiction over licensees**
39 **involved in collaborative drug therapy management. Such committee**
40 **shall advise and make recommendations to the state board of**
41 **pharmacy and state board of healing arts on matters relating to**
42 **collaborative drug therapy management.**

43 (b) The collaborative drug therapy management advisory

1 committee shall consist of seven members: (1) One member of the
2 board of pharmacy appointed by the board of pharmacy, who shall
3 serve as the nonvoting chairperson; (2) three licensed pharmacists
4 appointed by the state board of pharmacy, at least two of whom shall
5 have experience in collaborative drug therapy management; and (3)
6 three persons licensed to practice medicine and surgery appointed by
7 the state board of healing arts, at least two of whom shall have
8 experience in collaborative drug therapy management. The state
9 board of pharmacy shall give consideration to any names submitted
10 by the Kansas pharmacists association when making appointments to
11 the committee. The state board of healing arts shall give consideration
12 to any names submitted by the Kansas medical society when making
13 appointments to the committee. Members appointed to the committee
14 shall serve terms of two years, except that of the four members of the
15 committee first appointed to the committee by the state board of
16 pharmacy, two shall be appointed for terms of two years and two shall
17 be appointed for terms of one year as specified by the state board of
18 pharmacy and that of the three members of the committee first
19 appointed to the committee by the state board of healing arts, two
20 shall be appointed for terms of two years and one shall be appointed
21 for a term of one year as specified by the state board of healing arts.
22 Members appointed to the committee shall serve without
23 compensation. All expenses of the committee shall be equally divided
24 and paid by the state board of pharmacy and state board of healing
25 arts.

26 (c) This section shall be part of and supplemental to the
27 pharmacy act of the state of Kansas.

28 ~~Sec.-3.~~ 4. K.S.A. 65-1626a and K.S.A. 2013 Supp. 65-1637b are
29 hereby repealed.

30 ~~Sec.-4.~~ 5. This act shall take effect and be in force from and after its
31 publication in the statute book.