

1 **SENATE FLOOR VERSION**

2 March 2, 2023

3 SENATE BILL NO. 765

By: Standridge

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5
6 An Act relating to the practice of pharmacy; defining
7 terms; requiring wholesale distributors to make
8 adequate provisions for the return of certain
9 outdated prescription drugs; requiring wholesale
10 distributors to establish certain written policy;
11 stating criteria of policy; providing exemption;
12 providing eligibility criteria for drugs; requiring
13 prompt full credit to purchaser; requiring certain
14 notification and documentation; requiring wholesale
15 distributors to maintain certain records; prohibiting
16 submission of drugs under certain conditions;
17 providing for disciplinary action; requiring
18 compliance with applicable laws, rules, and
19 regulations; amending 59 O.S. 2021, Section 353.24,
20 which relates to unlawful acts; creating exception;
21 updating statutory language; providing for
22 codification; and providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 355.5 of Title 59, unless there
is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Full credit" means a cash refund or credit with the drug
wholesale distributor for the purchase price of the drug as
established by drug invoice less a reasonable fee for handling of

1 the returned drugs. A reasonable fee shall not be more than seven
2 percent (7%) of the total invoice price of the returned drugs; and

3 2. "Reverse drug distributor" means a firm, whether located
4 inside or outside this state, that receives drugs for destruction,
5 return credit, or otherwise disposes of drugs received from a
6 registrant located in this state who holds a permit or license to
7 dispense or possess drugs. As used in this paragraph, "registrant"
8 means a person registered by the Director of the Oklahoma State
9 Bureau of Narcotics and Dangerous Drugs Control under Section 2-302
10 of Title 63 of the Oklahoma Statutes.

11 B. Effective with all drug orders placed on or after the
12 effective date of this act, all wholesale distributors shall make
13 adequate provisions for the return of outdated prescription drugs,
14 both full and partial containers, for up to six (6) months after the
15 labeled expiration date for prompt full credit.

16 C. Wholesale distributors shall establish a written policy
17 providing for the return of outdated prescription drugs sold to a
18 client by such wholesale distributor. Such policy may include a
19 procedure for the drugs to be returned to the drug manufacturer, may
20 include a requirement that the drugs be returned in the original
21 containers in which they were purchased, and may include the use of
22 a reverse drug distributor. Such policy shall be available to the
23 State Board of Pharmacy or its agents upon request.

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1 D. Influenza vaccines shall be exempt from the requirements of
2 this provision if they have an expiration date of less than one year
3 from the date such drug is manufactured.

4 E. In order to be eligible for full credit, the drug must be
5 received by the wholesale distributor, or if not the wholesale
6 distributor, its agent designated in its return policy, no later
7 than the sixth month from the labeled expiration date. A signed
8 delivery receipt shall constitute evidence of the drugs having been
9 returned.

10 F. Prompt full credit to the purchaser shall occur within sixty
11 (60) calendar days from the date the return drugs were received by
12 the wholesale distributor or its designated agent. If the wholesale
13 distributor determines that the drugs were not returned within six
14 (6) months of the labeled expiration date, or were not returned
15 consistent with the written return policy, then the wholesale
16 distributor shall notify the purchaser in writing within thirty (30)
17 calendar days of the receipt of the drugs of its intent not to give
18 full credit. Wholesale distributors shall maintain documentation
19 supporting their refusal to give full credit for a period of two (2)
20 years. Such documentation shall be available to the Board or its
21 agent upon request.

22 G. Wholesale distributors shall maintain records of all credits
23 made under this section for a period of two (2) years and such
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1 record shall be made available to the Board or its agent upon
2 request.

3 H. The submission of drugs by a purchaser licensed by the Board
4 in this state for refund or credit to a wholesale distributor
5 pursuant to this section when the drugs are in a container other
6 than the one in which they were purchased, when the drugs were not
7 purchased from that wholesale distributor, or when the drugs were
8 purchased for a pharmacy or facility outside this state shall
9 constitute fraudulent and unprofessional conduct and may subject the
10 purchaser to disciplinary action by the Board.

11 I. The return of drugs under this section shall comply with all
12 other applicable federal, state, and local laws, rules, and
13 regulations.

14 SECTION 2. AMENDATORY 59 O.S. 2021, Section 353.24, is
15 amended to read as follows:

16 Section 353.24. A. It shall be unlawful for any licensee or
17 other person to:

18 1. Forge or increase the quantity of drug in any prescription,
19 or to present a prescription bearing forged, fictitious or altered
20 information or to possess any drug secured by such forged,
21 fictitious or altered prescription;

22 2. Sell, offer for sale, barter or give away any unused
23 quantity of drugs obtained by prescription, except through a program
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1 pursuant to the Utilization of Unused Prescription Medications Act
2 or as otherwise provided by the State Board of Pharmacy;

3 3. Sell, offer for sale, barter or give away any drugs damaged
4 by fire, water, or other causes without first obtaining the written
5 approval of the Board or the State Department of Health;

6 4. No person, firm or business establishment shall offer to the
7 public, in any manner, their services as a "pick-up station" or
8 intermediary for the purpose of having prescriptions filled or
9 delivered, whether for profit or gratuitously. Nor may the owner of
10 any pharmacy or drug store authorize any person, firm or business
11 establishment to act for them in this manner with these exceptions:

12 a. patient-specific filled prescriptions may be delivered
13 or shipped to a prescriber's clinic for pick-up by
14 those patients whom the prescriber has individually
15 determined and documented do not have a permanent or
16 secure mailing address,

17 b. patient-specific filled prescriptions for drugs which
18 require special handling written by a prescriber may
19 be delivered or shipped to the prescriber's clinic for
20 administration or pick-up at the prescriber's office,

21 c. patient-specific filled prescriptions, including
22 sterile compounded drugs, may be delivered or shipped
23 to a prescriber's clinic where they shall be
24 administered,

- 1 d. patient-specific filled prescriptions for patients
2 with end-stage renal disease (ESRD) may be delivered
3 or shipped to a prescriber's clinic for administration
4 or final delivery to the patient,
- 5 e. patient-specific filled prescriptions for
6 radiopharmaceuticals may be delivered or shipped to a
7 prescriber's clinic for administration or pick-up, or
- 8 f. patient-specific filled prescriptions may be delivered
9 or shipped by an Indian Health ~~Services~~ Service (IHS)
10 or federally recognized tribal health organization
11 operating under the IHS in the delivery of the
12 prescriptions to a pharmacy operated by the IHS or a
13 federally recognized tribal health organization for
14 pick-up by an IHS or tribal patient.

15 However, nothing in this paragraph shall prevent a pharmacist or
16 an employee of the pharmacy from personally receiving a prescription
17 or delivering a legally filled prescription to a residence, office
18 or place of employment of the patient for whom the prescription was
19 written. Provided further, the provisions of this paragraph shall
20 not apply to any Department of Mental Health and Substance Abuse
21 Services employee or any person whose facility contracts with the
22 Department of Mental Health and Substance Abuse Services whose
23 possession of any dangerous drug, as defined in Section 353.1 of
24 this title, is for the purpose of delivery of a mental health

1 consumer's medicine to the consumer's home or residence. Nothing in
2 this paragraph shall prevent veterinary prescription drugs from
3 being shipped directly from an Oklahoma licensed wholesaler or
4 distributor registered with the ~~Oklahoma~~ State Board of Veterinary
5 Medical Examiners to a client; provided, such drugs may be dispensed
6 only on prescription of a licensed veterinarian and only when an
7 existing veterinary-client-patient relationship exists. Nothing in
8 this paragraph shall prevent dialysate and peritoneal dialysis
9 devices from being shipped directly from an Oklahoma licensed
10 manufacturer, wholesaler or distributor to an ESRD patient or
11 patient's designee, consistent with subsection F of Section 353.18
12 of this title;

13 5. Sell, offer for sale or barter or buy any professional
14 samples except through a program pursuant to the Utilization of
15 Unused Prescription Medications Act;

16 6. Refuse to permit or otherwise prevent members of the Board
17 or such representatives thereof from entering and inspecting any and
18 all places, including premises, vehicles, equipment, contents, and
19 records, where drugs, medicine, chemicals or poisons are stored,
20 sold, vended, given away, compounded, dispensed, repackaged,
21 transported, or manufactured;

22 7. Interfere, refuse to participate in, impede or otherwise
23 obstruct any inspection, investigation or disciplinary proceeding
24 authorized by the Oklahoma Pharmacy Act;

1 8. Possess dangerous drugs without a valid prescription or a
2 valid license to possess such drugs; provided, however, this
3 provision shall not apply to any Department of Mental Health and
4 Substance Abuse Services employee or any person whose facility
5 contracts with the Department of Mental Health and Substance Abuse
6 Services whose possession of any dangerous drug, as defined in
7 Section 353.1 of this title, is for the purpose of delivery of a
8 mental health consumer's medicine to the consumer's home or
9 residence;

10 9. Fail to establish and maintain effective controls against
11 the diversion of drugs for any other purpose than legitimate
12 medical, scientific or industrial uses as provided by state, federal
13 and local law;

14 10. Fail to have a written drug diversion detection and
15 prevention policy;

16 11. Possess, sell, offer for sale, barter or give away any
17 quantity of dangerous drugs not listed as a scheduled drug pursuant
18 to Sections 2-201 through 2-212 of Title 63 of the Oklahoma Statutes
19 when obtained by prescription bearing forged, fictitious or altered
20 information.

21 a. A first violation of this section shall constitute a
22 misdemeanor and upon conviction shall be punishable by
23 imprisonment in the county jail for a term not more
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1 than one (1) year and a fine in an amount not more
2 than One Thousand Dollars (\$1,000.00).

3 b. A second violation of this section shall constitute a
4 felony and upon conviction shall be punishable by
5 imprisonment in the Department of Corrections for a
6 term not exceeding five (5) years and a fine in an
7 amount not more than Two Thousand Dollars (\$2,000.00);

8 12. Violate a Board order or agreed order;

9 13. Compromise the security of licensure examination materials;

10 or

11 14. Fail to notify the Board, in writing, within ten (10) days
12 of a licensee or permit holder's address change.

13 B. 1. It shall be unlawful for any person other than a
14 licensed pharmacist or physician to certify a prescription before
15 delivery to the patient or the patient's representative or
16 caregiver. Dialysate and peritoneal dialysis devices supplied
17 pursuant to the provisions of subsection F of Section 353.18 of this
18 title shall not be required to be certified by a pharmacist prior to
19 being supplied by a manufacturer, wholesaler or distributor.

20 2. It shall be unlawful for any person to institute or manage a
21 pharmacy unless such person is a licensed pharmacist or has placed a
22 licensed pharmacist in charge of such pharmacy.

23 3. No licensed pharmacist shall manage, supervise or be in
24 charge of more than one pharmacy.

1 4. No pharmacist being requested to sell, furnish or compound
2 any drug, medicine, chemical or other pharmaceutical preparation, by
3 prescription or otherwise, shall substitute or cause to be
4 substituted for it, without authority of the prescriber or
5 purchaser, any like drug, medicine, chemical or pharmaceutical
6 preparation.

7 5. No pharmacy, pharmacist-in-charge or other person shall
8 permit the practice of pharmacy except by a licensed pharmacist or
9 assistant pharmacist.

10 6. No person shall subvert the authority of the pharmacist-in-
11 charge of the pharmacy by impeding the management of the
12 prescription department to act in compliance with federal and state
13 law.

14 C. ~~1.—It~~ Except as provided by Section 1 of this act, it shall
15 be unlawful for ~~a~~:

16 1. A pharmacy to resell dangerous drugs to any wholesale
17 distributor.

18 ~~2.—It shall be unlawful for a; or~~

19 2. A wholesale distributor to purchase drugs from a pharmacy.

20 SECTION 3. This act shall become effective November 1, 2023.

21 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
22 March 2, 2023 - DO PASS

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