

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

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

5 Sec. 2. K.S.A. 2013 Supp. 65-1637b is hereby amended to read as
6 follows: 65-1637b. (a) The pharmacist shall exercise professional
7 judgment regarding the accuracy, validity and authenticity of any
8 prescription order consistent with federal and state laws and rules and
9 regulations. A pharmacist shall not dispense a prescription drug if the
10 pharmacist, in the exercise of professional judgment, determines that the
11 prescription is not a valid prescription order.

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

16 (c) (1) A new written or electronically prepared and transmitted
17 prescription order shall be manually or electronically signed by the
18 prescriber. If transmitted by the prescriber's agent, the first and last names
19 of the transmitting agent shall be included in the order.

20 (2) If the prescription is for a controlled substance and is written or
21 printed from an electronic prescription application, the prescription shall
22 be manually signed by the prescriber prior to delivery of the prescription
23 to the patient or prior to facsimile transmission of the prescription to the
24 pharmacy.

25 (3) An electronically prepared prescription shall not be electronically
26 transmitted to the pharmacy if the prescription has been printed prior to
27 electronic transmission. An electronically prepared and transmitted
28 prescription which is printed following electronic transmission shall be
29 clearly labeled as a copy, not valid for dispensing.

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

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

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

43 (1) If the transmission is completed by the prescriber's agent, and the

1 first and last names of the transmitting agent are included in the order, the
2 prescriber's signature is not required on the fax or alternate electronic
3 transmission.

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

8 (e) Regardless of the means of transmission to a pharmacy, only a
9 pharmacist or a pharmacist intern shall be authorized to receive a new
10 prescription order from a prescriber or transmitting agent. A pharmacist, a
11 pharmacist intern or a registered pharmacy technician may receive a refill
12 or renewal order from a prescriber or transmitting agent if such registered
13 pharmacy technician's supervising pharmacist has authorized that function.

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

17 ~~(1) A prescription for a prescription drug or device that is not a~~
18 ~~controlled substance may authorize no more than 12 refills within 18~~
19 ~~months following the date on which the prescription is issued.~~

20 ~~(2)~~ (2) A prescription for a schedule III, IV or V controlled substance
21 may authorize no more than five refills within six months following the
22 date on which the prescription is issued.

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

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

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

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

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

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

43 (h) If a prescription order contains a statement that during any

1 particular time the prescription may be refilled at will, there shall be no
2 limitation as to the number of times that such prescription may be refilled
3 except that it may not be refilled after the expiration of the time specified
4 or one year after the prescription was originally issued, whichever occurs
5 first.

6 (i) Prescription orders shall be recorded in writing by the pharmacist
7 and the record so made by the pharmacist shall constitute the original
8 prescription to be dispensed by the pharmacist. This record, if telephoned
9 by other than the prescriber, shall bear the *full* name of the person so
10 telephoning. Nothing in this section shall be construed as altering or
11 affecting in any way laws of this state or any federal act requiring a written
12 prescription order.

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

17 (2) A pharmacist may refill a prescription order issued on or after the
18 effective date of this act for any prescription drug except a drug listed on
19 schedule II of the uniform controlled substances act or a narcotic drug
20 listed on any schedule of the uniform controlled substances act without the
21 prescriber's authorization when all reasonable efforts to contact the
22 prescriber have failed and when, in the pharmacist's professional
23 judgment, continuation of the medication is necessary for the patient's
24 health, safety and welfare. Such prescription refill shall only be in an
25 amount judged by the pharmacist to be sufficient to maintain the patient
26 until the prescriber can be contacted, but in no event shall a refill under
27 this paragraph be more than a seven day supply or one package of the
28 drug. However, if the prescriber states on a prescription that there shall be
29 no emergency refilling of that prescription, then the pharmacist shall not
30 dispense any emergency medication pursuant to that prescription. A
31 pharmacist who refills a prescription order under this subsection (j)(2)
32 shall contact the prescriber of the prescription order on the next business
33 day subsequent to the refill or as soon thereafter as possible. No
34 pharmacist shall be required to refill any prescription order under this
35 subsection (j)(2). A prescriber shall not be subject to liability for any
36 damages resulting from the refilling of a prescription order by a
37 pharmacist under this subsection (j)(2) unless such damages are
38 occasioned by the gross negligence or willful or wanton acts or omissions
39 by the prescriber.

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

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

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

8 Sec. 3. K.S.A. 65-1626a and K.S.A. 2013 Supp. 65-1637b are hereby
9 repealed.

10 Sec. 4. This act shall take effect and be in force from and after its
11 publication in the statute book.