SENATE BILL NO. 329–SENATORS BREEDEN AND WIENER

MARCH 21, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing prescriptions. (BDR 54-904)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[**~~omitted material~~**]** is material to be omitted.

AN ACT relating to pharmacy; requiring practitioners to include on a prescription the symptom or purpose for which a drug is prescribed; authorizing a patient to choose whether the symptom or purpose for which a drug is prescribed be included on the label of the container of the drug; requiring a pharmacy to provide the contents of a prescription to a person authorized by the patient for whom the prescription was originally issued; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes, but does not require, a practitioner to ask a patient if the patient wishes to have included on the label of a prescription the symptom or purpose for which the drug is dispensed and, if the patient so requests, requires the practitioner to include such information on the written prescription. (NRS 639.2352) **Sections 1-3 and 7** of this bill require the practitioner to include the symptom or purpose for which the drug is dispensed on the written prescription. **Section 2** also requires the practitioner to ask the patient if the patient wants such information included on the label attached to the container of the drug and to include on the written prescription a notation whether the symptom or purpose for which the drug is dispensed must be included on the label. **Section 6** of this bill requires that a prescription filled by a practitioner be dispensed in a container with a label that clearly shows the symptom or purpose for which the drug is prescribed, if the prescription contains a notation that the symptom or purpose must be included on the label as requested by the patient.

Existing law prohibits a pharmacist from sharing the contents of a prescription except with certain authorized persons, including the patient, certain practitioners

or pharmacists, members or investigators of certain boards and agencies, insurance carriers, persons authorized by court order and certain peace officers. (NRS 639.238) **Section 4** of this bill authorizes a pharmacist to share the contents of a prescription with a person authorized by the patient or a parent or legal guardian of the patient.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 639.23284 is hereby amended to read as follows:

639.23284 1. Every pharmacy located outside Nevada that provides mail order service to a resident of Nevada:

(a) Shall report to the Board any change of information that appears on its license and pay the fee required by regulation of the Board.

(b) Shall make available for inspection all pertinent records, reports, documents or other material or information required by the Board.

(c) As required by the Board, must be inspected by the Board or:

(1) The regulatory board or licensing authority of the state or country in which the pharmacy is located; or

(2) The Drug Enforcement Administration.

(d) As required by the Board, shall provide the following information concerning each prescription for a drug that is shipped, mailed or delivered to a resident of Nevada:

(1) The name of the patient;

(2) The name of the prescriber;

(3) The number of the prescription;

(4) The date of the prescription;

(5) The name of the drug;

(6) The symptom or purpose for which the drug is prescribed ~~[, if requested by the patient]~~ ***;***

(7) A notation whether the symptom or purpose for which the drug is prescribed must be included on the label attached to the container of the drug pursuant to NRS 639.2352; and

~~[(7)]~~ ***(8)*** The strength and quantity of the dose.

2. In addition to complying with the requirements of subsection 1, every Canadian pharmacy which is licensed by the Board and which has been recommended by the Board pursuant to subsection 4 of NRS 639.2328 for inclusion on the Internet website established and maintained pursuant to subsection 9 of NRS 223.560 that provides mail order service to a resident of Nevada shall not sell, distribute or furnish to a resident of this State:

(a) A controlled substance;

(b) A prescription drug that has not been approved by the federal Food and Drug Administration;

(c) A generic prescription drug that has not been approved by the federal Food and Drug Administration;

(d) A prescription drug for which the federal Food and Drug Administration has withdrawn or suspended its approval; or

(e) A quantity of prescription drugs at one time that includes more drugs than are prescribed to the patient as a 3-month supply of the drugs.

Sec. 2. NRS 639.2352 is hereby amended to read as follows:

639.2352 Before issuing a prescription, a practitioner ~~[may]~~ ***shall*** ask the patient whether he or she wishes to have included on the label ~~[of the prescription]~~ ***attached to the container of the drug*** the symptom or purpose for which the drug is prescribed. ~~[If the patient requests that the information be included on the label, the]~~ ***The*** practitioner shall include on the prescription the symptom or purpose for which the drug is prescribed ~~[.]~~ ***and a notation that the symptom or purpose must:***

1. Be included on the label attached to the container of the drug, if the patient requests that the information be included on the label; or

2. Not be included on the label attached to the container of the drug, if the patient requests that the information not be included on the label.

Sec. 3. NRS 639.2353 is hereby amended to read as follows:

639.2353 Except as otherwise provided in a regulation adopted pursuant to NRS 453.385 or 639.2357:

1. A prescription must be given:

(a) Directly from the practitioner to a pharmacist;

(b) Indirectly by means of an order signed by the practitioner;

(c) By an oral order transmitted by an agent of the practitioner; or

(d) Except as otherwise provided in subsection 5, by electronic transmission or transmission by a facsimile machine, including, without limitation, transmissions made from a facsimile machine to another facsimile machine, a computer equipped with a facsimile modem to a facsimile machine or a computer to another computer, pursuant to the regulations of the Board.

2. A written prescription must contain:

(a) Except as otherwise provided in this section, the name and signature of the practitioner, and the address of the practitioner if not immediately available to the pharmacist;

(b) The classification of his or her license;

(c) The name of the patient, and the address of the patient if not immediately available to the pharmacist;

(d) The name, strength and quantity of the drug prescribed;

(e) The symptom or purpose for which the drug is prescribed ~~[, if included by the practitioner]~~ ***;***

(f) A notation whether the symptom or purpose for which the drug is prescribed must be included on the label attached to the container of the drug pursuant to NRS 639.2352;

~~[(f)]~~ ***(g)*** Directions for use; and

~~[(g)]~~ ***(h)*** The date of issue.

3. The directions for use must be specific in that they indicate the portion of the body to which the medication is to be applied or, if to be taken into the body by means other than orally, the orifice or canal of the body into which the medication is to be inserted or injected.

4. Each written prescription must be written in such a manner that any registered pharmacist would be able to dispense it. A prescription must be written in Latin or English and may include any character, figure, cipher or abbreviation which is generally used by pharmacists and practitioners in the writing of prescriptions.

5. A prescription for a controlled substance must not be given by electronic transmission or transmission by a facsimile machine unless authorized by federal law.

6. A prescription that is given by electronic transmission is not required to contain the signature of the practitioner if:

(a) It contains a facsimile signature, security code or other mark that uniquely identifies the practitioner; or

(b) A voice recognition system, biometric identification technique or other security system approved by the Board is used to identify the practitioner.

Sec. 4. NRS 639.238 is hereby amended to read as follows:

639.238 1. Prescriptions filled and on file in a pharmacy are not a public record. Except as otherwise provided in NRS 439.538 and 639.2357, a pharmacist shall not divulge the contents of any prescription or provide a copy of any prescription, except to:

(a) The patient for whom the original prescription was issued;

(b) ***Any person authorized by the patient for whom the original prescription was issued or, if applicable, the parent or legal guardian of the patient;***

(c) The practitioner who originally issued the prescription;

~~[(c)]~~ ***(d)*** A practitioner who is then treating the patient;

~~[(d)]~~ ***(e)*** A member, inspector or investigator of the Board or an inspector of the Food and Drug Administration or an agent of the Investigation Division of the Department of Public Safety;

~~[(e)]~~ ***(f)*** An agency of state government charged with the responsibility of providing medical care for the patient;

~~[(f)]~~ ***(g)*** An insurance carrier, on receipt of written authorization signed by the patient or his or her legal guardian, authorizing the release of such information;

~~[(g)]~~ ***(h)*** Any person authorized by an order of a district court;

~~[(h)]~~ ***(i)*** Any member, inspector or investigator of a professional licensing board which licenses a practitioner who orders prescriptions filled at the pharmacy;

~~[(i)]~~ ***(j)*** Other registered pharmacists for the limited purpose of and to the extent necessary for the exchange of information relating to persons who are suspected of:

(1) Misusing prescriptions to obtain excessive amounts of drugs; or

(2) Failing to use a drug in conformity with the directions for its use or taking a drug in combination with other drugs in a manner that could result in injury to that person;

~~[(j)]~~ ***(k)*** A peace officer employed by a local government for the limited purpose of and to the extent necessary:

(1) For the investigation of an alleged crime reported by an employee of the pharmacy where the crime was committed; or

(2) To carry out a search warrant or subpoena issued pursuant to a court order; or

~~[(k)]~~ ***(l)*** A county coroner, medical examiner or investigator employed by an office of a county coroner for the purpose of:

(1) Identifying a deceased person;

(2) Determining a cause of death; or

(3) Performing other duties authorized by law.

2. Any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is issued to a county coroner, medical examiner or investigator employed by an office of a county coroner must be limited to a copy of the prescription filled or on file for:

(a) The person whose name is on the container of the controlled substance or dangerous drug that is found on or near the body of a deceased person; or

(b) The deceased person whose cause of death is being determined.

3. Except as otherwise provided in NRS 639.2357, any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS, issued to a person authorized by this section to receive such a copy, must contain all of the information appearing on the original prescription and be clearly marked on its face "Copy, Not Refillable—For Reference Purposes Only." The copy must bear the name or initials of the registered pharmacist who prepared the copy.

4. If a copy of a prescription for any controlled substance or a dangerous drug as defined in chapter 454 of NRS is furnished to the customer, the original prescription must be voided and notations made thereon showing the date and the name of the person to whom the copy was furnished.

5. As used in this section, "peace officer" does not include:

(a) A member of the Police Department of the Nevada System of Higher Education.

(b) A school police officer who is appointed or employed pursuant to NRS 391.100.

Sec. 5. NRS 639.239 is hereby amended to read as follows:

639.239 Members, inspectors and investigators of the Board, inspectors of the Food and Drug Administration, agents of the Investigation Division of the Department of Public Safety and peace officers described in paragraph ~~[(j)]~~ ***(k)*** of subsection 1 of NRS 639.238 may remove any record required to be retained by state or federal law or regulation, including any prescription contained in the files of a practitioner, if the record in question will be used as evidence in a criminal action, civil action or an administrative proceeding, or contemplated action or proceeding. The person who removes a record pursuant to this section shall:

1. Affix the name and address of the practitioner to the back of the record;

2. Affix his or her initials, cause an agent of the practitioner to affix his or her initials and note the date of the removal of the record on the back of the record;

3. Affix the name of the agency for which the person is removing the record to the back of the record;

4. Provide the practitioner with a receipt for the record; and

5. Return a photostatic copy of both sides of the record to the practitioner within 15 working days after the record is removed.

Sec. 6. NRS 639.2801 is hereby amended to read as follows:

639.2801 Unless specified to the contrary in writing on the prescription by the prescribing practitioner, all prescriptions filled by any practitioner must be dispensed in a container to which is affixed a label or other device which clearly shows:

1. The date.

2. The name, address and prescription serial number of the practitioner who filled the prescription.

3. The names of the prescribing practitioner and of the person for whom prescribed.

4. The number of dosage units.

5. The symptom or purpose for which the drug is prescribed, if ~~[included]~~ ***the prescription contains a notation*** by the practitioner

that the symptom or purpose must be included on the label or other device pursuant to NRS 639.2352.

6. Specific directions for use given by the prescribing practitioner.

7. The expiration date of the effectiveness of the drug or medicine dispensed, if that information is included on the original label of the manufacturer of that drug or medicine. If the expiration date specified by the manufacturer is not less than 1 year after the date of dispensing, the practitioner may use a date that is 1 year after the date of dispensing as the expiration date.

8. The proprietary or generic name of the drug or medicine as written by the prescribing practitioner.

9. The strength of the drug or medicine.

➥ The label must contain the warning:

Caution: Do not use with alcohol or nonprescribed drugs without consulting the prescribing practitioner.

Sec. 7. NRS 454.223 is hereby amended to read as follows:

454.223 1. Each prescription for a dangerous drug must be written on a prescription blank or as an order on the chart of a patient. A chart of a patient may be used to order multiple prescriptions for that patient.

2. A written prescription must contain:

(a) The name of the practitioner, the signature of the practitioner if the prescription was not transmitted orally and the address of the practitioner if not immediately available to the pharmacist;

(b) The classification of his or her license;

(c) The name of the patient, and the address of the patient if not immediately available to the pharmacist;

(d) The name, strength and quantity of the drug or drugs prescribed;

(e) The symptom or purpose for which the drug is prescribed ~~[, if included by the practitioner]~~ ***;***

(f) A notation whether the symptom or purpose for which the drug is prescribed must be included on the label attached to the container of the drug pursuant to NRS 639.2352;

~~[(f)]~~ ***(g)*** Directions for use; and

~~[(g)]~~ ***(h)*** The date of issue.

3. Directions for use must be specific in that they must indicate the portion of the body to which the medication is to be applied, or, if to be taken into the body by means other than orally, the orifice or canal of the body into which the medication is to be inserted or injected.