

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 326

Final Reading

Introduced by Howard, 9; Gloor, 35.

Read first time January 17, 2013

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to pharmacists; to amend sections 38-2845,
 2 38-2847, 71-2444, 71-2445, 71-2446, 71-2447, 71-2448,
 3 71-2449, and 71-2452, Reissue Revised Statutes of
 4 Nebraska; to define and redefine terms; to change
 5 provisions of the Pharmacy Practice Act and the Automated
 6 Medication Systems Act; to provide for licensure of long-
 7 term care automated pharmacies; to provide for a
 8 patient's choice of pharmacy; to harmonize provisions;
 9 and to repeal the original sections.

10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-2845, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 38-2845 Supervision means the ~~immediate~~ personal guidance
4 and direction by ~~the licensed~~ a pharmacist on duty in the facility of
5 the performance by a pharmacy technician of authorized activities or
6 functions subject to verification by such pharmacist. Supervision of
7 a pharmacy technician may occur by means of a real-time audiovisual
8 communication system. ~~, except that when a pharmacy technician~~
9 ~~performs authorized activities or functions to assist a pharmacist on~~
10 ~~duty in the facility when the prescribed drugs or devices will be~~
11 ~~administered by a licensed staff member or consultant or by a~~
12 ~~licensed physician assistant to persons who are patients or residents~~
13 ~~of a facility, the activities or functions of such pharmacy~~
14 ~~technician shall only be subject to verification by a pharmacist on~~
15 ~~duty in the facility.~~

16 Sec. 2. Section 38-2847, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 38-2847 Verification means the confirmation by a
19 supervising pharmacist of the accuracy and completeness of the acts,
20 tasks, or functions undertaken by a pharmacy technician to assist the
21 pharmacist in the practice of pharmacy. Verification shall occur by a
22 pharmacist on duty in the facility, except that if a pharmacy
23 technician performs authorized activities or functions to assist a
24 pharmacist and the prescribed drugs or devices will be administered
25 to persons who are patients or residents of a facility by a

1 credentialed individual authorized to administer medications,
2 verification may occur by means of a real-time audiovisual
3 communication system.

4 Sec. 3. Section 71-2444, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-2444 Sections 71-2444 to 71-2452 and sections 9 and 10
7 of this act shall be known and may be cited as the Automated
8 Medication Systems Act.

9 Sec. 4. Section 71-2445, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 71-2445 For purposes of the Automated Medication Systems
12 Act:

13 (1) Automated medication distribution machine means a
14 type of automated medication system that stores medication to be
15 administered to a patient by a person credentialed under the Uniform
16 Credentialing Act;

17 (2) Automated medication system means a mechanical system
18 that performs operations or activities, other than compounding,
19 administration, or other technologies, relative to storage and
20 packaging for dispensing or distribution of medications and that
21 collects, controls, and maintains all transaction information and
22 includes, but is not limited to, a prescription medication
23 distribution machine or an automated medication distribution machine.
24 An automated medication system may only be used in conjunction with
25 the provision of pharmacist care;

1 (3) Chart order means an order for a drug or device
2 issued by a practitioner for a patient who is in the hospital where
3 the chart is stored, ~~or~~ for a patient receiving detoxification
4 treatment or maintenance treatment pursuant to section 28-412, or for
5 a resident in a long-term care facility in which a long-term care
6 automated pharmacy is located from which drugs will be dispensed.
7 Chart order does not include a prescription;

8 (4) Hospital has the definition found in section 71-419;

9 (5) Long-term care automated pharmacy means a designated
10 area in a long-term care facility where an automated medication
11 system is located, that stores medications for dispensing pursuant to
12 a medical order to residents in such long-term care facility, that is
13 installed and operated by a pharmacy licensed under the Health Care
14 Facility Licensure Act, and that is licensed under section 9 of this
15 act;

16 ~~(5)–(6)~~ Long-term care facility means an intermediate
17 care facility, an intermediate care facility for the mentally
18 retarded, a long-term care hospital, a mental health center, a
19 nursing facility, or a skilled nursing facility, as such terms are
20 defined in the Health Care Facility Licensure Act;

21 ~~(6)–(7)~~ Medical order means a prescription, a chart
22 order, or an order for pharmaceutical care issued by a practitioner;

23 ~~(7)–(8)~~ Pharmacist means any person who is licensed by
24 the State of Nebraska to practice pharmacy;

25 ~~(8)–(9)~~ Pharmacist care means the provision by a

1 pharmacist of medication therapy management, with or without the
2 dispensing of drugs or devices, intended to achieve outcomes related
3 to the cure or prevention of a disease, elimination or reduction of a
4 patient's symptoms, or arresting or slowing of a disease process;

5 ~~(9)~~(10) Pharmacist remote order entry means entering an
6 order into a computer system or drug utilization review by a
7 pharmacist licensed to practice pharmacy in the State of Nebraska and
8 located within the United States, pursuant to medical orders in a
9 hospital, long-term care facility, or pharmacy licensed under the
10 Health Care Facility Licensure Act;

11 ~~(10)~~(11) Practice of pharmacy means (a) the
12 interpretation, evaluation, and implementation of a medical order,
13 (b) the dispensing of drugs and devices, (c) drug product selection,
14 (d) the administration of drugs or devices, (e) drug utilization
15 review, (f) patient counseling, (g) the provision of pharmaceutical
16 care, and (h) the responsibility for compounding and labeling of
17 dispensed or repackaged drugs and devices, proper and safe storage of
18 drugs and devices, and maintenance of proper records. The active
19 practice of pharmacy means the performance of the functions set out
20 in this subdivision by a pharmacist as his or her principal or
21 ordinary occupation;

22 ~~(11)~~(12) Practitioner means a certified registered nurse
23 anesthetist, a certified nurse midwife, a dentist, an optometrist, a
24 nurse practitioner, a physician assistant, a physician, a podiatrist,
25 or a veterinarian;

1 ~~(12)~~(13) Prescription means an order for a drug or
2 device issued by a practitioner for a specific patient, for emergency
3 use, or for use in immunizations. Prescription does not include a
4 chart order;

5 ~~(13)~~(14) Prescription medication distribution machine
6 means a type of automated medication system that packages, labels, or
7 counts medication in preparation for dispensing of medications by a
8 pharmacist pursuant to a prescription; and

9 ~~(14)~~(15) Telepharmacy means the provision of pharmacist
10 care, by a pharmacist located within the United States, using
11 telecommunications, remote order entry, or other automations and
12 technologies to deliver care to patients or their agents who are
13 located at sites other than where the pharmacist is located.

14 Sec. 5. Section 71-2446, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-2446 Any automated machine that dispenses, delivers,
17 or makes available, other than by administration, prescription
18 medication directly to a patient or caregiver without the provision
19 of pharmacist care is prohibited.

20 Sec. 6. Section 71-2447, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-2447 Any hospital, long-term care facility, or
23 pharmacy that uses an automated medication system shall develop,
24 maintain, and comply with policies and procedures developed in
25 consultation with the pharmacist responsible for pharmacist care for

1 that hospital, long-term care facility, or pharmacy. At a minimum,
2 the policies and procedures shall address the following:

3 (1) The description and location within the hospital,
4 long-term care facility, or pharmacy of the automated medication
5 system or equipment being used;

6 (2) The name of the ~~individual or individuals~~ pharmacist
7 responsible for implementation of and compliance with the policies
8 and procedures;

9 (3) Medication access and information access procedures;

10 (4) Security of inventory and confidentiality of records
11 in compliance with state and federal laws, rules, and regulations;

12 (5) A description of the process used by a pharmacist or
13 pharmacy technician for filling an automated medication system;

14 ~~(5)-(6)~~ (6) A description of how and by whom the automated
15 medication system is being utilized, including processes for ~~filling,~~
16 verifying, dispensing, and distributing medications;

17 ~~(6)-(7)~~ (7) Staff education and training;

18 ~~(7)-(8)~~ (8) Quality assurance and quality improvement
19 programs and processes;

20 ~~(8)-(9)~~ (9) Inoperability or emergency downtime procedures;

21 ~~(9)-(10)~~ (10) Periodic system maintenance; and

22 ~~(10)-(11)~~ (11) Medication security and controls.

23 Sec. 7. Section 71-2448, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-2448 A prescription medication distribution machine:

1 (1) Is subject to the requirements of section 71-2447
2 and, if it is in a long-term care automated pharmacy, is subject to
3 section 9 of this act; and

4 (2) May be operated only (a) in a licensed pharmacy where
5 a pharmacist dispenses medications to patients for self-
6 administration pursuant to a prescription or (b) in a long-term care
7 automated pharmacy subject to section 9 of this act.

8 Sec. 8. Section 71-2449, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-2449 (1) An automated medication distribution machine:

11 (a) Is subject to the requirements of section 71-2447
12 and, if it is in a long-term care automated pharmacy, is subject to
13 section 9 of this act; and

14 (b) May be operated in a hospital or long-term care
15 facility for medication administration pursuant to a chart order or
16 prescription by a licensed health care professional.

17 (2) Drugs placed in an automated medication distribution
18 machine shall be in the manufacturer's original packaging or in
19 containers repackaged in compliance with state and federal laws,
20 rules, and regulations relating to repackaging, labeling, and record
21 keeping.

22 (3) The inventory which is transferred to an automated
23 medication distribution machine in a hospital ~~or long-term care~~
24 ~~facility~~ shall be excluded from the percent of total prescription
25 drug sales revenue described in section 71-7454.

1 Sec. 9. (1) In order for an automated medication system
2 to be operated in a long-term care facility, a pharmacist in charge
3 of a pharmacy licensed under the Health Care Facility Licensure Act
4 and located in Nebraska shall annually license the long-term care
5 automated pharmacy in which the automated medication system is
6 located.

7 (2) The pharmacist in charge of a licensed pharmacy shall
8 submit an application for licensure or renewal of licensure to the
9 Division of Public Health of the Department of Health and Human
10 Services with a fee in the amount of the fee the pharmacy pays for
11 licensure or renewal. The application shall include:

12 (a) The name and location of the licensed pharmacy;

13 (b) If controlled substances are stored in the automated
14 medication system, the federal Drug Enforcement Administration
15 registration number of the licensed pharmacy. After the long-term
16 care automated pharmacy is registered with the federal Drug
17 Enforcement Administration, the pharmacist in charge of the licensed
18 pharmacy shall provide the federal Drug Enforcement Administration
19 registration number of the long-term care automated pharmacy to the
20 division and any application for renewal shall include such
21 registration number;

22 (c) The location of the long-term care automated
23 pharmacy; and

24 (d) The name of the pharmacist in charge of the licensed
25 pharmacy.

1 (3) As part of the application process, the division
2 shall conduct an inspection by a pharmacy inspector as provided in
3 section 38-28,101 of the long-term care automated pharmacy. The
4 division shall also conduct inspections of the operation of the long-
5 term care automated pharmacy as necessary.

6 (4) The division shall license a long-term care automated
7 pharmacy which meets the licensure requirements of the Automated
8 Medication Systems Act.

9 (5) A pharmacist in charge of a licensed pharmacy shall
10 apply for a separate license for each location at which it operates
11 one or more long-term care automated pharmacies. The licensed
12 pharmacy shall be the provider pharmacy for the long-term care
13 automated pharmacy.

14 (6) The pharmacist in charge of the licensed pharmacy
15 operating a long-term care automated pharmacy shall:

16 (a) Identify a pharmacist responsible for the operation,
17 supervision, policies, and procedures of the long-term care automated
18 pharmacy;

19 (b) Implement the policies and procedures developed to
20 comply with section 71-2447;

21 (c) Assure compliance with the drug storage and record-
22 keeping requirements of the Pharmacy Practice Act;

23 (d) Assure compliance with the labeling requirements of
24 subsection (8) of this section;

25 (e) Develop and implement policies for the verification

1 of drugs by a pharmacist prior to being loaded into the automated
2 medication system or for the verification of drugs by a pharmacist
3 prior to being released for administration to a resident;

4 (f) Develop and implement policies for inventory,
5 security, and accountability for controlled substances; and

6 (g) Assure that each medical order is reviewed by a
7 pharmacist prior to the release of the drugs by the automated
8 medication system. Emergency doses may be taken from an automated
9 medication system prior to review by a pharmacist if the licensed
10 pharmacy develops and implements policies for emergency doses.

11 (7) Supervision by a pharmacist is sufficient for
12 compliance with the requirement of subdivision (6)(a) of this section
13 if the pharmacist in the licensed pharmacy monitors the automated
14 medication system electronically and keeps records of compliance with
15 such requirement for five years.

16 (8) Each drug dispensed from a long-term care automated
17 pharmacy shall be in a package with a label containing the following
18 information:

19 (a) The name and address of the long-term care automated
20 pharmacy;

21 (b) The prescription number;

22 (c) The name, strength, and dosage form of the drug;

23 (d) The name of the resident;

24 (e) The name of the practitioner who prescribed the drug;

25 (f) The date of filling; and

1 (g) Directions for use.

2 (9) A prescription is required for any controlled
3 substance dispensed from a long-term care automated pharmacy.

4 (10) The inventory which is transferred to a long-term
5 care automated pharmacy shall be excluded from the percent of total
6 prescription drug sales revenue described in section 71-7454.

7 Sec. 10. Unless otherwise allowed by state or federal law
8 or regulation, the management of a long-term care facility at which
9 an automated medication system is located shall not require a
10 resident of the facility to obtain medication through the automated
11 medication system and shall not restrict or impair the ability of a
12 resident of the facility to obtain medications from the pharmacy of
13 the resident's choice.

14 Sec. 11. Section 71-2452, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-2452 Any person who violates the Automated Medication
17 Systems Act may be subject to disciplinary action by the Division of
18 Public Health of the Department of Health and Human Services under
19 the Health Care Facility Licensure Act, ~~the Uniform Licensing Law,~~ or
20 the Uniform Credentialing Act.

21 Sec. 12. Original sections 38-2845, 38-2847, 71-2444,
22 71-2445, 71-2446, 71-2447, 71-2448, 71-2449, and 71-2452, Reissue
23 Revised Statutes of Nebraska, are repealed.