

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

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 registration of
7 long-term care automated pharmacies; to harmonize
8 provisions; and to repeal the original sections.
9 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~~ a licensed 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 auditory and
8 video 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 may occur by
22 means of a computer system with a real-time online data base and a
23 real-time auditory and video communication system of sufficient
24 quality and resolution for the pharmacist to identify the markings
25 and wording that appear on the medication and package labels being

1 verified.

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

4 71-2444 Sections 71-2444 to 71-2452 and section 9 of this
5 act shall be known and may be cited as the Automated Medication
6 Systems Act.

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

9 71-2445 For purposes of the Automated Medication Systems
10 Act:

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

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

24 (3) Chart order means an order for a drug or device
25 issued by a practitioner for a patient who is in the hospital where

1 the chart is stored or for a patient receiving detoxification
2 treatment or maintenance treatment pursuant to section 28-412. Chart
3 order does not include a prescription;

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

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

12 ~~(5)~~(6) Long-term care facility means an intermediate
13 care facility, an intermediate care facility for the mentally
14 retarded, a long-term care hospital, a mental health center, a
15 nursing facility, or a skilled nursing facility, as such terms are
16 defined in the Health Care Facility Licensure Act;

17 ~~(6)~~(7) Medical order means a prescription, a chart
18 order, or an order for pharmaceutical care issued by a practitioner;

19 ~~(7)~~(8) Pharmacist means any person who is licensed by
20 the State of Nebraska to practice pharmacy;

21 ~~(8)~~(9) Pharmacist care means the provision by a
22 pharmacist of medication therapy management, with or without the
23 dispensing of drugs or devices, intended to achieve outcomes related
24 to the cure or prevention of a disease, elimination or reduction of a
25 patient's symptoms, or arresting or slowing of a disease process;

1 ~~(9)~~(10) Pharmacist remote order entry means entering an
2 order into a computer system or drug utilization review by a
3 pharmacist licensed to practice pharmacy in the State of Nebraska and
4 located within the United States, pursuant to medical orders in a
5 hospital, long-term care facility, or pharmacy licensed under the
6 Health Care Facility Licensure Act;

7 ~~(10)~~(11) Practice of pharmacy means (a) the
8 interpretation, evaluation, and implementation of a medical order,
9 (b) the dispensing of drugs and devices, (c) drug product selection,
10 (d) the administration of drugs or devices, (e) drug utilization
11 review, (f) patient counseling, (g) the provision of pharmaceutical
12 care, and (h) the responsibility for compounding and labeling of
13 dispensed or repackaged drugs and devices, proper and safe storage of
14 drugs and devices, and maintenance of proper records. The active
15 practice of pharmacy means the performance of the functions set out
16 in this subdivision by a pharmacist as his or her principal or
17 ordinary occupation;

18 ~~(11)~~(12) Practitioner means a certified registered nurse
19 anesthetist, a certified nurse midwife, a dentist, an optometrist, a
20 nurse practitioner, a physician assistant, a physician, a podiatrist,
21 or a veterinarian;

22 ~~(12)~~(13) Prescription means an order for a drug or
23 device issued by a practitioner for a specific patient, for emergency
24 use, or for use in immunizations. Prescription does not include a
25 chart order;

1 ~~(13)~~(14) Prescription medication distribution machine
2 means a type of automated medication system that packages, labels, or
3 counts medication in preparation for dispensing of medications by a
4 pharmacist pursuant to a prescription; and

5 ~~(14)~~(15) Telepharmacy means the provision of pharmacist
6 care, by a pharmacist located within the United States, using
7 telecommunications, remote order entry, or other automations and
8 technologies to deliver care to patients or their agents who are
9 located at sites other than where the pharmacist is located.

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

12 71-2446 Any automated machine that dispenses, delivers,
13 or makes available, other than by administration, prescription
14 medication directly to a patient or caregiver without the provision
15 of pharmacist care is prohibited.

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

18 71-2447 Any hospital, long-term care facility, or
19 pharmacy that uses an automated medication system shall develop,
20 maintain, and comply with policies and procedures developed in
21 consultation with the pharmacist responsible for pharmacist care for
22 that hospital, long-term care facility, or pharmacy. At a minimum,
23 the policies and procedures shall address the following:

24 (1) The description and location within the hospital,
25 long-term care facility, or pharmacy of the automated medication

1 system or equipment being used;

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

5 (3) Medication access and information access procedures;

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

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

10 ~~(5)-(6)~~ A description of how and by whom the automated
11 medication system is being utilized, including processes for ~~filling,~~
12 verifying, dispensing, and distributing medications;

13 ~~(6)-(7)~~ Staff education and training;

14 ~~(7)-(8)~~ Quality assurance and quality improvement
15 programs and processes;

16 ~~(8)-(9)~~ Inoperability or emergency downtime procedures;

17 ~~(9)-(10)~~ Periodic system maintenance; and

18 ~~(10)-(11)~~ Medication security and controls.

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

21 71-2448 A prescription medication distribution machine:

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

25 (2) May be operated only (a) in a licensed pharmacy where

1 a pharmacist dispenses medications to patients for self-
2 administration pursuant to a prescription or (b) as a long-term care
3 automated pharmacy subject to section 9 of this act.

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

6 71-2449 (1) An automated medication distribution machine:

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

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

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

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

22 Sec. 9. (1) In order for an automated medication system
23 to be operated in a long-term care facility, a pharmacist in charge
24 of a pharmacy licensed under the Health Care Facility Licensure Act
25 and located in Nebraska shall annually register the long-term care

1 automated pharmacy.

2 (2) The pharmacist in charge of a licensed pharmacy shall
3 submit an application for registration or renewal of registration to
4 the Division of Public Health of the Department of Health and Human
5 Services with a fee in the amount of twenty percent of the fee the
6 pharmacy pays for licensure or renewal, as appropriate. The
7 application shall include:

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

9 (b) If controlled substances are stored in the automated
10 medication system, the Drug Enforcement Administration registration
11 numbers of the licensed pharmacy and of the long-term care automated
12 pharmacy;

13 (c) The location of the long-term care automated
14 pharmacy; and

15 (d) The name of the pharmacist in charge of the licensed
16 pharmacy.

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

22 (4) The division, with the recommendation of the Board of
23 Pharmacy, may register a long-term care automated pharmacy which
24 meets the registration requirements of the Automated Medication
25 Systems Act.

1 (5) A licensed pharmacy shall apply for a separate
2 registration for each location at which it operates one or more long-
3 term care automated pharmacies. The licensed pharmacy shall be the
4 provider pharmacy for the long-term care automated pharmacy.

5 (6) The pharmacist in charge of a long-term care
6 automated pharmacy shall:

7 (a) Identify a pharmacist responsible for the operation,
8 supervision, policies, and procedures of the long-term care automated
9 pharmacy;

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

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

14 (d) Assure compliance with the labeling requirements of
15 subsection (8) of this section;

16 (e) Develop and implement policies for review and
17 verification of drugs and medical orders by a pharmacist prior to the
18 release of the drugs by the automated medication system and
19 administration to a patient;

20 (f) Develop and implement policies for inventory,
21 security, and accountability for controlled substances; and

22 (g) Assure that controlled substances are dispensed and
23 labeled as required by the Uniform Controlled Substances Act and the
24 rules and regulations adopted and promulgated under the act.

25 (7) Supervision by a pharmacist is sufficient for

1 compliance with the requirement of subdivision (6)(a) of this section
2 if the licensed pharmacy contracts with or employs a pharmacist to
3 verify drugs upon the filling of the automated medication system or
4 prior to being administered to a patient.

5 (8) If the long-term care automated pharmacy has a drug
6 packaged for administration to an ultimate user who is a resident of
7 the long-term care facility, the package label shall contain:

8 (a) The name and address of the provider pharmacy;

9 (b) The prescription number;

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

11 (d) The name of the patient; and

12 (e) The name of the practitioner who prescribed the drug.

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

16 Sec. 10. Section 71-2452, Reissue Revised Statutes of
17 Nebraska, is amended to read:

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

23 Sec. 11. Original sections 38-2845, 38-2847, 71-2444,
24 71-2445, 71-2446, 71-2447, 71-2448, 71-2449, and 71-2452, Reissue
25 Revised Statutes of Nebraska, are repealed.