

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 731

Introduced by Williams, 36.

Read first time January 03, 2018

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to controlled substances; to amend sections
2 38-2833, 38-2847, 38-2891, 38-28,106, and 71-425, Reissue Revised
3 Statutes of Nebraska, sections 71-403, 71-2448, and 71-2483, Revised
4 Statutes Cumulative Supplement, 2016, and sections 38-2801, 38-2802,
5 38-2870, 38-2892, and 71-401, Revised Statutes Supplement, 2017; to
6 define and redefine terms; to provide for licensure of remote
7 dispensing pharmacies; to provide for remote dispensing; to
8 harmonize provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-2801, Revised Statutes Supplement, 2017, is
2 amended to read:

3 38-2801 Sections 38-2801 to 38-28,107 and sections 4 to 6 of this
4 act and the Nebraska Drug Product Selection Act shall be known and may be
5 cited as the Pharmacy Practice Act.

6 Sec. 2. Section 38-2802, Revised Statutes Supplement, 2017, is
7 amended to read:

8 38-2802 For purposes of the Pharmacy Practice Act and elsewhere in
9 the Uniform Credentialing Act, unless the context otherwise requires, the
10 definitions found in sections 38-2803 to 38-2848 and sections 4 to 6 of
11 this act apply.

12 Sec. 3. Section 38-2833, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 38-2833 Pharmacist in charge means a pharmacist who is designated on
15 a pharmacy license or a remote dispensing pharmacy license or designated
16 by a hospital as being responsible for the practice of pharmacy in the
17 pharmacy for which a pharmacy license or a remote dispensing pharmacy
18 license is issued or in a hospital pharmacy and who works within the
19 physical confines of such pharmacy or hospital pharmacy.

20 Sec. 4. Remote dispensing has the same meaning as in section 15 of
21 this act.

22 Sec. 5. Remote dispensing pharmacy has the same meaning as in
23 section 16 of this act.

24 Sec. 6. Supervising pharmacy has the same meaning as in section 17
25 of this act.

26 Sec. 7. Section 38-2847, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 38-2847 (1) Verification means the confirmation by a supervising
29 pharmacist of the accuracy and completeness of the acts, tasks, or
30 functions undertaken by a pharmacy technician to assist the pharmacist in
31 the practice of pharmacy.

1 (2) Verification shall occur by a pharmacist on duty in the
2 facility, except that verification may occur by means of a real-time
3 audiovisual communication system if (a) a pharmacy technician performs
4 authorized activities or functions to assist a pharmacist and the
5 prescribed drugs or devices will be administered to persons who are
6 patients or residents of a facility by a credentialed individual
7 authorized to administer medications or (b) a pharmacy technician is
8 engaged in remote dispensing in compliance with section 18 of this act ~~7~~
9 ~~verification may occur by means of a real-time audiovisual communication~~
10 ~~system.~~

11 Sec. 8. Section 38-2870, Revised Statutes Supplement, 2017, is
12 amended to read:

13 38-2870 (1) All medical orders shall be written, oral, or electronic
14 and shall be valid for the period stated in the medical order, except
15 that (a) if the medical order is for a controlled substance listed in
16 section 28-405, such period shall not exceed six months from the date of
17 issuance at which time the medical order shall expire and (b) if the
18 medical order is for a drug or device which is not a controlled substance
19 listed in section 28-405 or is an order issued by a practitioner for
20 pharmaceutical care, such period shall not exceed twelve months from the
21 date of issuance at which time the medical order shall expire.

22 (2) Prescription drugs or devices may only be dispensed by a
23 pharmacist or pharmacist intern pursuant to a medical order, by an
24 individual dispensing pursuant to a delegated dispensing permit, or as
25 otherwise provided in section 38-2850. Notwithstanding any other
26 provision of law to the contrary, a pharmacist or a pharmacist intern may
27 dispense drugs or devices pursuant to a medical order or an individual
28 dispensing pursuant to a delegated dispensing permit may dispense drugs
29 or devices pursuant to a medical order. The Pharmacy Practice Act shall
30 not be construed to require any pharmacist or pharmacist intern to
31 dispense, compound, administer, or prepare for administration any drug or

1 device pursuant to any medical order. A pharmacist or pharmacist intern
2 shall retain the professional right to refuse to dispense.

3 (3) Except as otherwise provided in sections 28-414 and 28-414.01, a
4 practitioner or the practitioner's agent may transmit a medical order to
5 a pharmacist or pharmacist intern and an authorized refill to a
6 pharmacist, pharmacist intern, or pharmacy technician by the following
7 means: (a) In writing, (b) orally, (c) by facsimile transmission of a
8 written medical order or electronic transmission of a medical order
9 signed by the practitioner, or (d) by facsimile transmission of a written
10 medical order or electronic transmission of a medical order which is not
11 signed by the practitioner. Such an unsigned medical order shall be
12 verified with the practitioner.

13 (4)(a) Except as otherwise provided in sections 28-414 and
14 28-414.01, any medical order transmitted by facsimile or electronic
15 transmission shall:

16 (i) Be transmitted by the practitioner or the practitioner's agent
17 directly to a pharmacist or pharmacist intern in a licensed pharmacy of
18 the patient's choice; and any authorized refill transmitted by facsimile
19 or electronic transmission shall be transmitted by the practitioner or
20 the practitioner's agent directly to a pharmacist, pharmacist intern, or
21 pharmacy technician. No intervening person shall be permitted access to
22 the medical order to alter such order or the licensed pharmacy chosen by
23 the patient. Such medical order may be transmitted through a third-party
24 intermediary who shall facilitate the transmission of the order from the
25 practitioner or practitioner's agent to the pharmacy;

26 (ii) Identify the transmitter's telephone number or other suitable
27 information necessary to contact the transmitter for written or oral
28 confirmation, the time and date of the transmission, the identity of the
29 pharmacy intended to receive the transmission, and other information as
30 required by law; and

31 (iii) Serve as the original medical order if all other requirements

1 of this subsection are satisfied.

2 (b) Medical orders transmitted by electronic transmission shall be
3 signed by the practitioner either with an electronic signature for legend
4 drugs which are not controlled substances or a digital signature for
5 legend drugs which are controlled substances.

6 (5) The pharmacist shall exercise professional judgment regarding
7 the accuracy, validity, and authenticity of any medical order transmitted
8 by facsimile or electronic transmission.

9 (6) The quantity of drug indicated in a medical order for a resident
10 of a long-term care facility shall be sixty days unless otherwise limited
11 by the prescribing practitioner.

12 Sec. 9. Section 38-2891, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 38-2891 (1) A pharmacy technician shall only perform tasks which do
15 not require the professional judgment of a pharmacist and which are
16 subject to verification to assist a pharmacist in the practice of
17 pharmacy.

18 (2) The functions and tasks which shall not be performed by pharmacy
19 technicians include, but are not limited to:

20 (a) Receiving oral medical orders from a practitioner or his or her
21 agent except as otherwise provided in subsection (3) of section 38-2870;

22 (b) Providing patient counseling;

23 (c) Performing any evaluation or necessary clarification of a
24 medical order or performing any functions other than strictly clerical
25 functions involving a medical order;

26 (d) Supervising or verifying the tasks and functions of pharmacy
27 technicians;

28 (e) Interpreting or evaluating the data contained in a patient's
29 record maintained pursuant to section 38-2869;

30 (f) Releasing any confidential information maintained by the
31 pharmacy;

1 (g) Performing any professional consultations; and

2 (h) Drug product selection, with regard to an individual medical
3 order, in accordance with the Nebraska Drug Product Selection Act.

4 (3) The director shall, with the recommendation of the board, waive
5 any of the limitations in subsection (2) of this section for purposes of
6 a scientific study of the role of pharmacy technicians approved by the
7 board. Such study shall be based upon providing improved patient care or
8 enhanced pharmaceutical care. Any such waiver shall state the length of
9 the study and shall require that all study data and results be made
10 available to the board upon the completion of the study. Nothing in this
11 subsection requires the board to approve any study proposed under this
12 subsection.

13 Sec. 10. Section 38-2892, Revised Statutes Supplement, 2017, is
14 amended to read:

15 38-2892 (1) The pharmacist in charge of a pharmacy, remote
16 dispensing pharmacy, or hospital pharmacy employing pharmacy technicians
17 shall be responsible for the supervision and performance of the pharmacy
18 technicians.

19 (2) Except as otherwise provided in the Automated Medication Systems
20 Act, the supervision of pharmacy technicians at a pharmacy shall be
21 performed by the pharmacist who is on duty in the facility with the
22 pharmacy technicians or located in pharmacies that utilize a real-time,
23 online data base and have a pharmacist in all pharmacies. The supervision
24 of pharmacy technicians at a remote dispensing pharmacy or hospital
25 pharmacy shall be performed by the pharmacist assigned by the pharmacist
26 in charge to be responsible for the supervision and verification of the
27 activities of the pharmacy technicians.

28 Sec. 11. Section 38-28,106, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 38-28,106 An employee or agent of a prescribing practitioner may
31 communicate a prescription, chart order, or refill authorization issued

1 by the prescribing practitioner to a pharmacist or a pharmacist intern
2 except for an emergency oral authorization for a controlled substance
3 listed in Schedule II of section 28-405. An employee or agent of a
4 prescribing practitioner may communicate a refill authorization issued by
5 the prescribing practitioner to a pharmacy technician.

6 Sec. 12. Section 71-401, Revised Statutes Supplement, 2017, is
7 amended to read:

8 71-401 Sections 71-401 to 71-475 and sections 15 to 18 of this act
9 shall be known and may be cited as the Health Care Facility Licensure
10 Act.

11 Sec. 13. Section 71-403, Revised Statutes Cumulative Supplement,
12 2016, is amended to read:

13 71-403 For purposes of the Health Care Facility Licensure Act,
14 unless the context otherwise requires, the definitions found in sections
15 71-404 to 71-431 and sections 15 to 17 of this act shall apply.

16 Sec. 14. Section 71-425, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 71-425 Pharmacy means a facility advertised as a pharmacy, drug
19 store, hospital pharmacy, dispensary, remote dispensing pharmacy, or any
20 combination of such titles where drugs or devices are dispensed as
21 defined in the Pharmacy Practice Act.

22 Sec. 15. Remote dispensing means dispensing that occurs using
23 remote supervision in compliance with section 18 of this act.

24 Sec. 16. Remote dispensing pharmacy means a pharmacy staffed by
25 certified pharmacy technicians in Nebraska in which remote dispensing may
26 occur.

27 Sec. 17. Supervising pharmacy means a pharmacy licensed and located
28 in Nebraska that owns and operates a licensed remote dispensing pharmacy.

29 Sec. 18. (1) A pharmacy shall obtain a remote dispensing pharmacy
30 license under the Health Care Facility Licensure Act prior to engaging in
31 remote dispensing. At the time of initial licensure as a remote

1 dispensing pharmacy, the remote dispensing pharmacy must be located ten
2 driving miles or more from the nearest pharmacy. The remote dispensing
3 pharmacy shall operate in accordance with this section.

4 (2) If the remote dispensing pharmacy employs a certified pharmacy
5 technician to dispense prescription drugs, remote dispensing shall occur
6 under remote supervision via a real-time audiovisual communication system
7 by a licensed pharmacist employed by a supervising pharmacy. The licensed
8 pharmacist must be licensed and located in Nebraska. If the real-time
9 audiovisual communication system between the remote dispensing pharmacy
10 and supervising pharmacy is not working, no remote dispensing can be
11 completed at the remote dispensing pharmacy until the real-time
12 audiovisual communication system is restored and working properly.

13 (3) The remote dispensing pharmacy must have the same pharmacist in
14 charge as the supervising pharmacy. The pharmacist in charge must ensure
15 that a pharmacist is onsite at the remote dispensing pharmacy at a
16 minimum of once each calendar month. The pharmacist in charge in the
17 supervising pharmacy may delegate tasks to another pharmacist who is
18 employed by the supervising pharmacy, such as supervision of the
19 certified pharmacy technician working remotely in the remote dispensing
20 pharmacy, oversight of inventory, patient counseling, and other duties as
21 assigned. The pharmacist supervising the certified pharmacy technician
22 remotely is responsible for the drug utilization review, the final
23 verification, and the supervision of the remote dispensing at the remote
24 dispensing pharmacy.

25 (4) In order for remote dispensing to occur in a remote dispensing
26 pharmacy:

27 (a) When a prescription is being dispensed to a patient or
28 caregiver, the supervising pharmacist must attempt to counsel on all new
29 prescriptions dispensed from the remote dispensing pharmacy; and

30 (b) The real-time audiovisual communication system must be working
31 properly.

1 Sec. 19. Section 71-2448, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 71-2448 A prescription medication distribution machine:

4 (1) Is subject to the requirements of section 71-2447 and, if it is
5 in a long-term care automated pharmacy, is subject to section 71-2451;
6 and

7 (2) May be operated only (a) in a licensed pharmacy where a
8 pharmacist dispenses medications to patients for self-administration
9 pursuant to a prescription, (b) in a remote dispensing pharmacy as
10 described in section 18 of this act, or (c) ~~(b)~~ in a long-term care
11 automated pharmacy subject to section 71-2451.

12 Sec. 20. Section 71-2483, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 71-2483 An employee or agent of a prescribing practitioner may
15 communicate a prescription, chart order, or refill authorization issued
16 by the prescribing practitioner to a pharmacist or a pharmacist intern
17 except for an emergency oral authorization for a controlled substance
18 listed in Schedule II of section 28-405. An employee or agent of a
19 prescribing practitioner may communicate a refill authorization issued by
20 the prescribing practitioner to a pharmacy technician.

21 Sec. 21. Original sections 38-2833, 38-2847, 38-2891, 38-28,106,
22 and 71-425, Reissue Revised Statutes of Nebraska, sections 71-403,
23 71-2448, and 71-2483, Revised Statutes Cumulative Supplement, 2016, and
24 sections 38-2801, 38-2802, 38-2870, 38-2892, and 71-401, Revised Statutes
25 Supplement, 2017, are repealed.