STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 328 By: McCortney

AS INTRODUCED

An Act relating to controlled dangerous substances; amending 63 O.S. 2021, Section 2-309, as last amended by Section 1, Chapter 259, O.S.L 2021, which relates to prescriptions; broadening exception from electronic prescription requirement; defining term; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2021, Section 2-309, as last amended by Section 1, Chapter 259, O.S.L 2021, is amended to read as follows:

Section 2-309. A. 1. Except for dosages medically required for a period not to exceed forty-eight (48) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule II, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, shall be dispensed without an electronic prescription of a practitioner; provided, that in emergency situations, as prescribed

by the Board of Pharmacy by regulation, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist in a manner to be prescribed by rules and regulations of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

2. Electronic prescribing shall be utilized for Schedules II, III, IV and V, subject to the requirements set forth in 21 CFR, Section 1311 et seq.

3. An electronic prescription with electronic signature may serve as an original prescription, subject to the requirements set forth in 21 CFR, Section 1311 et seq.

4. Prescriptions shall be retained in conformity with the requirements of this section and Section 2-307 of this title. No prescription for a Schedule II substance may be refilled.

5. The electronic prescription requirement provided for in this section shall not apply to prescriptions for controlled dangerous substances issued by any of the following:

a. a person licensed to practice veterinary medicine,

b. a practitioner who experiences temporary technological or electrical failure or other extenuating circumstance that prevents the prescription from being transmitted electronically; provided, however, that the practitioner documents the reason for this exception in the medical record of the patient,

c. a practitioner, other than a pharmacist, who dispenses directly to an ultimate user,

d. a practitioner who orders a controlled dangerous substance to be administered through an on-site pharmacy in:

(1) a hospital as defined in Section 1-701 of this title,

(2) a nursing facility as defined in Section 1-1902 of this title,

(3) a hospice inpatient facility as defined in Section 1-860.2 of this title,

(4) an outpatient dialysis facility,

(5) a continuum of care facility as defined in Section 1-890.2 of this title, or

(6) a penal institution listed in Section 509 of Title 57 of the Oklahoma Statutes,

e. a practitioner who orders a controlled dangerous substance to be administered through a hospice program ~~as defined in~~ including but not limited to a hospice program that provides hospice services in the private residence of a patient or in a long-term care facility where a patient resides. As used in this subparagraph, "hospice program" has the same meaning as provided by Section 1-860.2 of this title,

f. a practitioner who writes a prescription to be dispensed by a pharmacy located on federal property, provided the practitioner documents the reason for this exception in the medical record of the patient, or

g. a practitioner that has received a waiver or extension from his or her licensing board.

6. Electronic prescriptions shall not be utilized under the following circumstances:

a. compound prescriptions containing two or more commercially available products or two or more active pharmaceutical ingredients,

b. compounded infusion prescriptions containing two or more commercially available products or two or more active pharmaceutical ingredients,

c. prescriptions issued under approved research protocols, or

d. if the practitioner determines that an electronic prescription cannot be issued in a timely manner and the condition of the patient is at risk.

7. A pharmacist who receives a written, oral or facsimile prescription shall not be required to verify that the prescription falls under one of the exceptions provided for in paragraph 6 of this subsection. Pharmacists may continue to dispense medications

from otherwise valid written, oral or facsimile prescriptions that are consistent with the provisions of this section.

8. Practitioners shall indicate in the health record of a patient that an exception to the electronic prescription requirement was utilized.

9. All prescriptions issued pursuant to paragraphs 5 and 6 of this subsection shall be issued on an official prescription form provided by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

10. a. Effective January 1, 2020, practitioners shall register with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in order to be issued official prescription forms. Such registration shall include, but not be limited to, the primary address and the address of each place of business to be imprinted on official prescription forms. Any change to a registered practitioner's registered address shall be promptly reported to the practitioner's licensing board and the Bureau by the practitioner in a manner approved by the Bureau.

b. A practitioner's registration shall be without fee and subject to approval by the Bureau. Such registration shall be valid for a period of two (2) years and may be denied, suspended or revoked by the Bureau upon a

finding by the Bureau or licensing board that the registered practitioner has had any license to practice a medical profession revoked or suspended by any state or federal agency.

c. Where the Bureau has revoked the registration of a registered practitioner, the Bureau may revoke or cancel any official prescription forms in the possession of the registered practitioner. Any revocation or any suspension shall require the registered practitioner to return all unused official prescription forms to the Bureau within fifteen (15) calendar days after the date of the written notification.

d. A practitioner that has had any license to practice terminated, revoked or suspended by a state or federal agency may, upon restoration of such license or certificate, register to be issued official prescription forms.

11. a. Except as provided in subparagraph f of this paragraph, the Bureau shall issue official prescription forms free of charge only to registered practitioners in this state. Such forms shall not be transferable. The number of official prescription

forms issued to a registered practitioner at any time shall be at the discretion of the Bureau.

b. Official prescription forms issued to a registered practitioner shall be imprinted only with the primary address and other addresses listed on the registration of the practitioner. Such prescriptions shall be sent only to the primary address of the registered practitioner.

c. Official prescription forms issued to a registered practitioner shall be used only by the practitioner to whom they are issued.

d. The Bureau may revoke or cancel official prescription forms in possession of registered practitioners when the license of such practitioner is suspended, terminated or revoked.

e. Official prescription forms of registered practitioners who are deceased or who no longer prescribe shall be returned to the Bureau at a designated address. If the registered practitioner is deceased, it is the responsibility of the registered practitioner’s estate or lawful designee to return such forms.

f. The Bureau may issue official prescription forms to employees or agents of the Bureau and other government

agencies for the purpose of preventing, identifying, investigating and prosecuting unacceptable or illegal practices by providers and other persons and assisting in the recovery of overpayments under any program operated by the state or paid for with state funds. Such prescription forms shall be issued for this purpose only to individuals who are authorized to conduct investigations on behalf of the Bureau or other government agencies as part of their official duties. Individuals and agencies receiving such prescription forms for this purpose shall provide appropriate assurances to the Bureau that adequate safeguards and security measures are in place to prevent the use of such prescription forms for anything other than official government purposes.

12. a. Adequate safeguards and security measures shall be undertaken by registered practitioners holding official prescription forms to assure against the loss, destruction, theft or unauthorized use of the forms. Registered practitioners shall maintain a sufficient but not excessive supply of such forms in reserve.

b. Registered practitioners shall immediately notify the Bureau, in a manner designated by the Bureau, upon

their knowledge of the loss, destruction, theft or unauthorized use of any official prescription forms issued to them, as well as the failure to receive official prescription forms within a reasonable time after ordering them from the Bureau.

c. Registered practitioners shall immediately notify the Bureau upon their knowledge of any diversion or suspected diversion of drugs pursuant to the loss, theft or unauthorized use of prescriptions.

B. 1. Except for dosages medically required for a period not to exceed seventy-two (72) hours which are administered by or on direction of a practitioner, other than a pharmacist, or medication dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule III or IV, which is a prescription drug as determined under regulation promulgated by the Board of Pharmacy, shall be dispensed without an electronic prescription.

2. Any prescription for a controlled dangerous substance in Schedule III, IV or V may not be filled or refilled more than six (6) months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

C. Whenever it appears to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control that a drug not

considered to be a prescription drug under existing state law or regulation of the Board of Pharmacy should be so considered because of its abuse potential, the Director shall so advise the Board of Pharmacy and furnish to the Board all available data relevant thereto.

D. 1. "Prescription", as used in this section, means a written, oral or electronic order by a practitioner to a pharmacist for a controlled dangerous substance for a particular patient, which specifies the date of its issue, and the full name and address of the patient and, if the controlled dangerous substance is prescribed for an animal, the species of the animal, the name and quantity of the controlled dangerous substance prescribed, the directions for use, the name and address of the owner of the animal and, if written, the signature of the practitioner.

2. "Registered practitioner", as used in this section, means a licensed practitioner duly registered with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to be issued official prescription forms.

E. No person shall solicit, dispense, receive or deliver any controlled dangerous substance through the mail, unless the ultimate user is personally known to the practitioner and circumstances clearly indicate such method of delivery is in the best interest of the health and welfare of the ultimate user.

SECTION 2. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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