STATE OF NEW YORK

5304

2023-2024 Regular Sessions

IN SENATE

March 1, 2023

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the definition of the practice of pharmacy; and to repeal section 6801-a of the education law, relating to the collaborative drug therapy management demonstration program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 6801 of the education law, as amended by chapter 563 of the laws of 2008, subdivision 1 as amended by chapter 21 of the laws of 2011, subdivisions 2 and 4 as amended by section 1 of part DD of chapter 57 of the laws of 2018, subdivision 5 as added by chapter 502 of the laws of 2016, subdivision 6 as added by chapter 134 of the laws of 2021, subdivision 7 as added by section 2 of part C of chapter 57 and subdivision 8 as added by chapter 802 of the laws of 2022, is amended to read as follows:

§ 6801. [~~Definition of practice~~] **Practice** of pharmacy. 1. [~~The practice of the profession of pharmacy is defined as the administering, preparing, compounding, preserving, or the dispensing of drugs, medicines and therapeutic devices on the basis of prescriptions or other legal authority, and collaborative drug therapy management in accordance with the provisions of section sixty-eight hundred one-a of this article.~~

~~2. A licensed pharmacist may execute a non-patient specific regimen prescribed or ordered by a physician licensed in this state or nurse practitioner certified in this state, pursuant to rules and regulations promulgated by the commissioner. When a licensed pharmacist administers an immunizing agent, he or she shall:~~

~~(a) report such administration by electronic transmission or facsimile to the patient's attending primary health care practitioner or practitioners, if any, and, to the extent practicable, make himself or herself available to discuss the outcome of such immunization, including any adverse reactions, with the attending primary health care practitioner, and to the statewide immunization registry or the citywide immunization~~

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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registry, as established pursuant to and to the extent permitted by section twenty-one hundred sixty-eight of the public health law; and

(b) provide information to the patient or, where applicable, the person legally responsible for the patient, on the importance of having a primary health care practitioner, developed by the commissioner of health; and

(c) report such administration, absent of any individually identifiable health information, to the department of health in a manner required by the commissioner of health; and

(d) prior to administering the immunization, inform the patient or, where applicable, the person legally responsible for the patient, of the total cost of the immunization or immunizations, subtracting any health insurance subsidization, if applicable. In the case the immunization is not covered, the pharmacist must inform the patient or, where applicable, the person legally responsible for the patient, of the possibility that the immunization may be covered when administered by a primary care physician or practitioner; and

(e) administer the immunization or immunizations according to the most current recommendations by the advisory committee for immunization practices (ACIP), provided however, that a pharmacist may administer any immunization authorized under this section when specified by a patient specific order.

3. No pharmacist shall administer immunizing agents without receiving training satisfactory to the commissioner and the commissioner of health which shall include, but not be limited to, techniques for screening individuals and obtaining informed consent; techniques of administration; indications, precautions and contraindications in the use of agent or agents; record keeping of immunization and information; and handling emergencies, including anaphylaxis and needlesticks.

4. When administering an immunization in a pharmacy, the licensed pharmacist shall provide an area for the immunization that provides for a patient's privacy. The privacy area should include:

a. a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by the advisory committee for immunization practices (ACIP); and

(b) education materials on influenza vaccinations for children as determined by the commissioner and the commissioner of health.

5. A licensed pharmacist may execute a non-patient specific order, for dispensing up to a seven day starter pack of HIV post-exposure prophylaxis medications for the purpose of preventing human immunodeficiency virus infection, by a physician licensed in this state or nurse practitioner certified in this state, pursuant to rules and regulations promulgated by the commissioner in consultation with the commissioner of health following a potential human immunodeficiency virus exposure.

6. A licensed pharmacist may execute a non-patient-specific regimen of insulin and related supplies to an individual who has a valid prescription for insulin and related supplies which has since expired within the last twelve months. The valid prescription must have been prescribed or ordered by a physician licensed in this state or nurse practitioner certified in this state. Execution of a non-patient-specific regimen shall be on an emergency basis provided the pharmacist:

(a) first attempts to obtain an authorization from the prescriber of the patient-specific prescription and cannot obtain the authorization, and the prescriber does not object to dispensing to the patient under the non-patient-specific regimen;

~~(b) provides a refill of the patient-specific prescription and the quantity of that refill is in conformity with the directions for use under the patient-specific prescription, but limited to an amount not to exceed a thirty-day emergency supply; and~~

~~(c) notifies, within seventy-two hours of dispensing the refill or refills, the prescriber of the patient-specific prescription whose authorization could not be obtained, that an emergency prescription of insulin has been dispensed.~~

~~7. A licensed pharmacist is a qualified health care professional under section five hundred seventy-one of the public health law for the purposes of directing a limited service laboratory and ordering and administering COVID-19 and influenza tests authorized by the Food and Drug Administration (FDA), subject to certificate of waiver requirements established pursuant to the federal clinical laboratory improvement act of nineteen hundred eighty-eight.~~

~~8. A licensed pharmacist within their lawful scope of practice may administer injectable medications into the deltoid muscle, pursuant to section six thousand eight hundred two of this article, for the treatment of mental health and substance use disorder, as prescribed or ordered by a licensed prescriber, acting within their scope of practice in this state and in accordance with regulations, including but not limited to regulations promulgated by the commissioner in consultation with any other state agencies, as necessary.~~] "Practice of pharmacy" means:

(a) the interpretation, evaluation and dispensing of prescription drug orders;

(b) participation in drug and device selection, drug administration, prospective and retrospective drug reviews and drug or drug-related research;

(c) the provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care;

(d) the responsibility for:

(i) compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices;

(ii) proper and safe storage of drugs and devices and maintenance of proper records for such drugs and devices; and

(iii) the offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy;

(e) the prescribing of drugs, drug categories, or devices that are limited to conditions that:

(i) do not require a new diagnosis;

(ii) are minor and generally self-limiting;

(iii) have a test that is used to guide diagnosis or clinical decision-making and are waived under the federal clinical laboratory improvement amendments of nineteen hundred eighty-eight; or

(iv) in the professional judgment of the pharmacist, threaten the health or safety of the patient should the prescription not be immediately dispensed. In such cases, only sufficient quantity may be provided until the patient is able to be seen by another provider.

2. The state board of pharmacy shall not adopt any rules authorizing a pharmacist to prescribe a controlled drug.

§ 2. Section 6801-a of the education law is REPEALED.

§ 3. This act shall take effect immediately.