

CHAPTER 40

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 19-1077

BY REPRESENTATIVE(S) Roberts, Baisley, Beckman, Bird, Buckner, Buentello, Caraveo, Cutter, Esgar, Exum, Galindo, Garnett, Herod, Hooton, Humphrey, Jackson, Jaquez Lewis, Kennedy, Landgraf, Lewis, Lontine, McCluskie, McLachlan, Michaelson Jenet, Mullica, Snyder, Titone, Van Winkle, Weissman, Becker, Arndt, Bockenfeld, Carver, Kipp, Melton, Valdez A.; also SENATOR(S) Tate and Pettersen, Bridges, Cooke, Court, Crowder, Donovan, Fenberg, Fields, Ginal, Gonzales, Moreno, Rodriguez, Scott, Sonnenberg, Todd, Williams A., Winter, Garcia.

AN ACT**CONCERNING AUTHORIZATION FOR A PHARMACIST TO DISPENSE A CHRONIC MAINTENANCE DRUG TO A PATIENT WITHOUT A CURRENT PRESCRIPTION IN LIMITED CIRCUMSTANCES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-42.5-102, **amend** (31)(b)(III), (31)(c) introductory portion, and (31)(c)(II)(C); and **add** (6.7) and (31)(d) as follows:

12-42.5-102. Definitions. As used in this article 42.5, unless the context otherwise requires or the term is otherwise defined in another part of this article 42.5:

(6.7) "CHRONIC MAINTENANCE DRUG" MEANS A DRUG THAT:

(a) IS NOT AN OPIOID OR IS NOT A CONTROLLED SUBSTANCE THAT IS PROHIBITED FROM BEING DISPENSED WITHOUT A PRESCRIPTION UNDER THE "FEDERAL FOOD, DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ., AS AMENDED; AND

(b) IS PRESCRIBED TO A PATIENT TO TAKE ON A RECURRING BASIS OR IS USED AS A LIFE-SAVING RESCUE DRUG FOR A CHRONIC CONDITION.

(31) "Practice of pharmacy" means:

(b) (III) The maintenance of proper records for such drugs and devices; ~~and~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(c) The provision of a therapeutic interchange selection or a therapeutically equivalent selection to a patient if, during the patient's stay at a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25, ~~C.R.S.~~, the selection has been approved for the patient:

(II) By one of the following health care providers:

(C) An advanced practice nurse prescriber licensed as a professional nurse under section 12-38-111, registered as an advanced practice nurse under section 12-38-111.5, and authorized to prescribe controlled substances or prescription drugs pursuant to section 12-38-111.6, if the advanced practice nurse prescriber has developed an articulated plan to maintain ongoing collaboration with physicians and other health care professionals; AND

(d) THE DISPENSING OF CHRONIC MAINTENANCE DRUGS PURSUANT TO SECTION 12-42.5-122.5 AND BOARD RULES ADOPTED IN ACCORDANCE WITH THAT SECTION.

SECTION 2. In Colorado Revised Statutes, 12-42.5-120, **amend** (1) as follows:

12-42.5-120. Prescription required - exception - dispensing opiate antagonists - definitions. (1) Except as provided in ~~section~~ SECTIONS 18-18-414 ~~C.R.S.~~, AND 12-42.5-122.5, and subsections (2) and (3) of this section, an order is required prior to dispensing any prescription drug. Orders shall be readily retrievable within the appropriate statute of limitations.

SECTION 3. In Colorado Revised Statutes, **add** 12-42.5-122.5 as follows:

12-42.5-122.5. Pharmacists' authority to dispense chronic maintenance drugs - rules - liability. (1) IN ACCORDANCE WITH BOARD RULES ADOPTED UNDER SUBSECTION (2) OF THIS SECTION, ON AND AFTER JANUARY 1, 2020, A PHARMACIST MAY DISPENSE AN EMERGENCY SUPPLY OF A CHRONIC MAINTENANCE DRUG TO A PATIENT WITHOUT A CURRENT, VALID PRESCRIPTION IF:

(a) THE PHARMACIST MAKES EVERY REASONABLE ATTEMPT BUT IS UNABLE TO OBTAIN AUTHORIZATION TO REFILL THE PRESCRIPTION FROM THE PRESCRIBING HEALTH CARE PROVIDER OR ANOTHER HEALTH CARE PROVIDER RESPONSIBLE FOR THE PATIENT'S CARE;

(b) (I) THE PHARMACIST HAS A RECORD OF A PRESCRIPTION AT THE PHARMACY OR HAS BEEN PRESENTED PROOF OF A RECENT PRESCRIPTION FOR THE CHRONIC MAINTENANCE DRUG IN THE NAME OF THE PATIENT WHO IS REQUESTING THE EMERGENCY SUPPLY; OR

(II) IN THE PHARMACIST'S PROFESSIONAL JUDGMENT, THE REFUSAL TO DISPENSE AN EMERGENCY SUPPLY OF THE CHRONIC MAINTENANCE DRUG WILL ENDANGER THE PATIENT'S HEALTH OR DISRUPT ESSENTIAL DRUG THERAPY FOR A CHRONIC CONDITION OF THE PATIENT;

(c) THE AMOUNT OF THE CHRONIC MAINTENANCE DRUG DISPENSED DOES NOT EXCEED THE AMOUNT OF THE MOST RECENT PRESCRIPTION OR THE STANDARD QUANTITY OR UNIT OF USE PACKAGE OF THE DRUG;

(d) THE PHARMACIST HAS NOT DISPENSED AN EMERGENCY SUPPLY OF THE CHRONIC MAINTENANCE DRUG TO THE SAME PATIENT IN THE PREVIOUS TWELVE-MONTH PERIOD; AND

(e) THE PRESCRIBER OF THE DRUG HAS NOT INDICATED THAT NO EMERGENCY REFILLS ARE AUTHORIZED.

(2) THE BOARD SHALL ADOPT RULES, IN CONSULTATION WITH THE COLORADO MEDICAL BOARD CREATED IN SECTION 12-36-103 AND THE STATE BOARD OF NURSING CREATED IN SECTION 12-38-104, TO ESTABLISH STANDARD PROCEDURES FOR PHARMACISTS TO FOLLOW IN DISPENSING CHRONIC MAINTENANCE DRUGS PURSUANT TO THIS SECTION. THE RULES ADOPTED UNDER THIS SUBSECTION (2) MUST INCLUDE DOCUMENTATION REQUIREMENTS FOR A PHARMACIST TO COMPLETE WHEN DISPENSING A CHRONIC MAINTENANCE DRUG WITHOUT A CURRENT PRESCRIPTION.

(3) A PHARMACIST, THE PHARMACIST'S EMPLOYER, AND THE ORIGINAL PRESCRIBER OF THE DRUG ARE NOT CIVILLY LIABLE FOR AN ACT OR OMISSION IN CONNECTION WITH THE DISPENSING OF A CHRONIC MAINTENANCE DRUG PURSUANT TO THIS SECTION UNLESS THE ACT OR OMISSION CONSTITUTES NEGLIGENCE, RECKLESSNESS, OR WILLFUL OR WANTON MISCONDUCT.

SECTION 4. In Colorado Revised Statutes, 12-280-103, **amend as relocated by House Bill 19-1172** (39)(b)(III) and (39)(c)(II)(C); and **add** (9.5) and (39)(d) as follows:

12-280-103. Definitions - rules. As used in this article 280, unless the context otherwise requires or the term is otherwise defined in another part of this article 280:

(9.5) "CHRONIC MAINTENANCE DRUG" MEANS A DRUG THAT:

(a) IS NOT AN OPIOID OR IS NOT A CONTROLLED SUBSTANCE THAT IS PROHIBITED FROM BEING DISPENSED WITHOUT A PRESCRIPTION UNDER THE "FEDERAL FOOD, DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ., AS AMENDED; AND

(b) IS PRESCRIBED TO A PATIENT TO TAKE ON A RECURRING BASIS OR IS USED AS A LIFE-SAVING RESCUE DRUG FOR A CHRONIC CONDITION.

(39) "Practice of pharmacy" means:

(b) (III) The maintenance of proper records for the drugs and devices; ~~and~~

(c) The provision of a therapeutic interchange selection or a therapeutically equivalent selection to a patient if, during the patient's stay at a nursing care facility or a long-term acute care hospital licensed under part 1 of article 3 of title 25, the selection has been approved for the patient:

(II) By one of the following health care providers:

(C) An advanced practice nurse prescriber licensed as a professional nurse under section 12-255-110, registered as an advanced practice nurse under section

12-255-111, and authorized to prescribe controlled substances or prescription drugs pursuant to section 12-255-112, if the advanced practice nurse prescriber has developed an articulated plan to maintain ongoing collaboration with physicians and other health care professionals; AND

(d) THE DISPENSING OF CHRONIC MAINTENANCE DRUGS PURSUANT TO SECTION 12-280-125.5 AND BOARD RULES ADOPTED IN ACCORDANCE WITH THAT SECTION.

SECTION 5. In Colorado Revised Statutes, 12-280-123, **amend as relocated by House Bill 19-1172** (1) as follows:

12-280-123. Prescription required - exception - dispensing opiate antagonists. (1) Except as provided in ~~section~~ SECTIONS 18-18-414 AND 12-280-125.5 and subsections (2) and (3) of this section, an order is required prior to dispensing any prescription drug. Orders shall be readily retrievable within the appropriate statute of limitations.

SECTION 6. In Colorado Revised Statutes, **add to article 280 as relocated by House Bill 19-1172** 12-280-125.5 as follows:

12-280-125.5. Pharmacists' authority to dispense chronic maintenance drugs - rules - liability. (1) IN ACCORDANCE WITH BOARD RULES ADOPTED UNDER SUBSECTION (2) OF THIS SECTION, ON AND AFTER JANUARY 1, 2020, A PHARMACIST MAY DISPENSE AN EMERGENCY SUPPLY OF A CHRONIC MAINTENANCE DRUG TO A PATIENT WITHOUT A CURRENT, VALID PRESCRIPTION IF:

(a) THE PHARMACIST MAKES EVERY REASONABLE ATTEMPT BUT IS UNABLE TO OBTAIN AUTHORIZATION TO REFILL THE PRESCRIPTION FROM THE PRESCRIBING HEALTH CARE PROVIDER OR ANOTHER HEALTH CARE PROVIDER RESPONSIBLE FOR THE PATIENT'S CARE;

(b) (I) THE PHARMACIST HAS A RECORD OF A PRESCRIPTION AT THE PHARMACY OR HAS BEEN PRESENTED PROOF OF A RECENT PRESCRIPTION FOR THE CHRONIC MAINTENANCE DRUG IN THE NAME OF THE PATIENT WHO IS REQUESTING THE EMERGENCY SUPPLY; OR

(II) IN THE PHARMACIST'S PROFESSIONAL JUDGMENT, THE REFUSAL TO DISPENSE AN EMERGENCY SUPPLY OF THE CHRONIC MAINTENANCE DRUG WILL ENDANGER THE PATIENT'S HEALTH OR DISRUPT ESSENTIAL DRUG THERAPY FOR A CHRONIC CONDITION OF THE PATIENT;

(c) THE AMOUNT OF THE CHRONIC MAINTENANCE DRUG DISPENSED DOES NOT EXCEED THE AMOUNT OF THE MOST RECENT PRESCRIPTION OR THE STANDARD QUANTITY OR UNIT OF USE PACKAGE OF THE DRUG;

(d) THE PHARMACIST HAS NOT DISPENSED AN EMERGENCY SUPPLY OF THE CHRONIC MAINTENANCE DRUG TO THE SAME PATIENT IN THE PREVIOUS TWELVE-MONTH PERIOD; AND

(e) THE PRESCRIBER OF THE DRUG HAS NOT INDICATED THAT NO EMERGENCY REFILLS ARE AUTHORIZED.

(2) THE BOARD SHALL ADOPT RULES, IN CONSULTATION WITH THE COLORADO MEDICAL BOARD CREATED IN SECTION 12-240-105 AND THE STATE BOARD OF NURSING CREATED IN SECTION 12-255-105, TO ESTABLISH STANDARD PROCEDURES FOR PHARMACISTS TO FOLLOW IN DISPENSING CHRONIC MAINTENANCE DRUGS PURSUANT TO THIS SECTION. THE RULES ADOPTED UNDER THIS SUBSECTION (2) MUST INCLUDE DOCUMENTATION REQUIREMENTS FOR A PHARMACIST TO COMPLETE WHEN DISPENSING A CHRONIC MAINTENANCE DRUG WITHOUT A CURRENT PRESCRIPTION.

(3) A PHARMACIST, THE PHARMACIST'S EMPLOYER, AND THE ORIGINAL PRESCRIBER OF THE DRUG ARE NOT CIVILLY LIABLE FOR AN ACT OR OMISSION IN CONNECTION WITH THE DISPENSING OF A CHRONIC MAINTENANCE DRUG PURSUANT TO THIS SECTION UNLESS THE ACT OR OMISSION CONSTITUTES NEGLIGENCE, RECKLESSNESS, OR WILLFUL OR WANTON MISCONDUCT.

SECTION 7. Effective date. This act takes effect upon passage; except that sections 4, 5, and 6 of this act take effect only if House Bill 19-1172 becomes law, in which case sections 4, 5, and 6 take effect October 1, 2019.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 21, 2019