Session of 2022

Senate Substitute for HOUSE BILL No. 2280

By Committee on Public Health and Welfare

2-9

AN ACT concerning health and healthcare; relating to prescription medications; authorizing the prescribing and dispensing of drugs for off-label use to prevent and treat COVID-19 infections; prohibiting pharmacists from using professional discretion to refuse to fill prescriptions for such drugs; relating to childhood vaccinations; requiring a child care facility or school to grant religious exemptions from vaccination requirements without inquiring into the sincerity of such religious beliefs; amending K.S.A. 65-508 and 72-6262 and K.S.A. 2021 Supp. 65-1637 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) (1) Notwithstanding any other provision of law to the contrary, a prescriber may prescribe a prescription drug approved by the United States food and drug administration, including, but not limited to, hydroxychloroquine sulfate and ivermectin, for an off-label use to prevent or treat COVID-19 infection in a patient. The provisions in this paragraph shall not apply to any controlled substances described in K.S.A. 21-5705, and amendments thereto.

(2) A prescriber may prescribe a prescription drug pursuant to this subsection even if the patient has not been exposed to or tested positive for COVID-19.

(b) (1) Any action taken by a prescriber pursuant to this subsection shall not be considered unprofessional conduct.

(2) (A) A recommendation, prescription, use or opinion of a prescriber related to a treatment for COVID-19, including a treatment that is not recommended or regulated by the licensing board, the department of health and environment or the federal food and drug administration, shall not be considered unprofessional conduct. The provisions of this paragraph shall apply retroactively to any disciplinary action accruing on or after March 12, 2020.

(B) The licensing boards for prescribers shall independently review all disciplinary action for acts accruing from the period of March 12, 2020, through the effective date of this section. If disciplinary action was taken based on conduct described in this paragraph, in whole or in part, the board shall reconsider such action and rescind any such disciplinary action prohibited by this paragraph.

(c) As used in this section:

(1) "COVID-19" means the disease caused by the novel coronavirus identified as SARS-CoV-2.

(2) "Disciplinary action" means a licensing board's revocation, limitation, suspension or denial of license, a licensee being publicly censured or placed under probationary conditions or any other discipline issued by a licensing board for unprofessional conduct.

(3) "Off-label use" means prescribing prescription drugs for treatments other than those stated in the labeling approved by the federal food and drug administration.

(4) "Prescriber" means a person licensed by the state board of healing arts to practice medicine and surgery in this state or a "mid-level practitioner" as defined in K.S.A. 65-1626, and amendments thereto.

(5) "Unprofessional conduct" means "professional incompetency" as defined in K.S.A. 65-1120 or 65-2837, and amendments thereto, and "unprofessional conduct" as defined in K.S.A. 65-2837, and amendments thereto.

Sec. 2. K.S.A. 65-508 is hereby amended to read as follows: 65-508. (a) Any maternity center or child care facility subject to the provisions of this act shall:

(1) Be properly heated, plumbed, lighted and ventilated;

(2) have plumbing, water and sewerage systems ~~which~~ *that* conform to all applicable state and local laws; and

(3) be operated with strict regard to the health, safety and welfare of any woman or child.

(b) Every maternity center or child care facility shall furnish or cause to be furnished for the use of each resident and employee individual towel, wash cloth, comb and individual drinking cup or sanitary bubbling fountain, and toothbrushes for all other than infants, and shall keep or require such articles to be kept at all times in a clean and sanitary condition. Every maternity center or child care facility shall comply with all applicable fire codes and rules and regulations of the state fire marshal.

(c) (1) The secretary of health and environment with the cooperation of the secretary for children and families shall develop and adopt rules and regulations for the operation and maintenance of maternity centers and child care facilities. The rules and regulations for operating and maintaining maternity centers and child care facilities shall be designed to promote the health, safety and welfare of any woman or child served in such facilities by ensuring safe and adequate physical surroundings, healthful food, adequate handwashing, safe storage of toxic substances and hazardous chemicals, sanitary diapering and toileting, home sanitation, supervision and care of the residents by capable, qualified persons of sufficient number, after-hour care, an adequate program of activities and

services, sudden infant death syndrome and safe sleep practices training, prohibition on corporal punishment, crib safety, protection from electrical hazards, protection from swimming pools and other water sources, fire drills, emergency plans, safety of outdoor playground surfaces, door locks, safety gates and transportation and such appropriate parental participation as may be feasible under the circumstances. Boarding schools are excluded from requirements regarding the number of qualified persons who must supervise and provide care to residents.

(2) Rules and regulations developed under this subsection shall include provisions for the competent supervision and care of children in day care facilities. For purposes of such rules and regulations, competent supervision as this term relates to children less than five years of age includes, but is not limited to, direction of activities, adequate oversight including sight or sound monitoring, or both, physical proximity to children, diapering and toileting practices; and for all children, competent supervision includes, but is not limited to, planning and supervision of daily activities, safe sleep practices, including, but not limited to, visual or sound monitoring, periodic checking, emergency response procedures and drills, illness and injury response procedures, food service preparation and sanitation, playground supervision, pool and water safety practices.

(d) In addition to any rules and regulations adopted under this section for safe sleep practices, child care facilities shall ensure that all of the following requirements are met for children under 12 months of age:

(1) A child shall only be placed to sleep on a surface and in an area that has been approved for use as such by the secretary of health and environment;

(2) the sleep surface shall be free from soft or loose bedding, including, but not limited to, blankets, bumpers and pillows; and

(3) the sleep surface shall be free from toys, including mobiles and other types of play equipment or devices.

(e) Child care facilities shall ensure that children over 12 months of age only be placed to sleep on a surface and in an area that has been approved for use as such by the secretary of health and environment.

(f) The secretary of health and environment may exercise discretion to make exceptions to requirements in subsections (d) and (e) where special health needs exist.

(g) Each child cared for in a child care facility, including children of the person maintaining the facility, shall be required to have current such immunizations as the secretary of health and environment considers necessary. The person maintaining a child care facility shall maintain a record of each child's immunizations and shall provide to the secretary of health and environment such information relating thereto, in accordance with rules and regulations of the secretary, but the person maintaining a

child care facility shall not have such person's license revoked solely for the failure to have or to maintain the immunization records required by this subsection.

(h) The immunization requirement of subsection (g) shall not apply if one of the following is obtained:

(1) Certification from a licensed physician stating that the physical condition of the child is such that immunization would endanger the child's life or health; or

(2) a written statement signed by a parent or guardian that *the requirement would violate sincerely held religious beliefs of* the parent or guardian ~~is an adherent of a religious denomination whose teachings are opposed to immunizations~~.

(i) The person maintaining a child care facility shall grant an exemption requested in accordance with subsection (h) based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(j) As used in this section, "religious beliefs" includes, but is not limited to, theistic and non-theistic moral and ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views.

Sec. 3. K.S.A. 2021 Supp. 65-1637 is hereby amended to read as follows: 65-1637. (a) The pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of any prescription order consistent with federal and state laws and rules and regulations. Except as provided in K.S.A. 65-1635(e), and amendments thereto, and as may otherwise be provided by law, a pharmacist shall not dispense a prescription drug if the pharmacist, in the exercise of professional judgment, determines that the prescription is not a valid prescription order.

(b) The prescriber may authorize an agent to transmit to the pharmacy a prescription order orally, by facsimile transmission or by electronic transmission, provided that the first and last names of the transmitting agent are included in the order.

(c) (1) A new written or electronically prepared and transmitted prescription order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the first and last names of the transmitting agent shall be included in the order.

(2) If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy.

(3) An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the prescription has been printed prior to electronic transmission. An electronically prepared and transmitted

prescription that is printed following electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

(4) The board is hereby authorized to conduct pilot projects related to any new technology implementation when deemed necessary and practicable, except that no state moneys shall be expended for such purpose.

(d) An authorization to refill a prescription order or to renew or continue an existing drug therapy may be transmitted to a pharmacist through oral communication, in writing, by facsimile transmission or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent, and the first and last names of the transmitting agent are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the refill order or renewal order differs in any manner from the original order, such as a change of the drug strength, dosage form or directions for use, the prescriber shall sign the order as provided by subsection (c)(1).

(e) Regardless of the means of transmission to a pharmacy, a pharmacist or a pharmacist intern shall be authorized to receive a new prescription order or a refill or renewal order from a prescriber or transmitting agent. A registered pharmacy technician may receive a refill, renewal or order for continuation of therapy that contains no changes from the original prescription from a prescriber or transmitting agent if such registered pharmacy technician's supervising pharmacist has authorized that function.

(f) A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription order.

A prescription for a schedule III, IV or V controlled substance may authorize no more than five refills within six months following the date on which the prescription is issued.

(g) All prescriptions shall be filled or refilled in strict conformity with any directions of the prescriber, except that:

(1) A pharmacist who receives a prescription order for a brand name drug product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser unless:

(A) The prescriber indicates "dispense as written" on the prescription or when communicating a prescription by oral order;

(B) the FDA has determined that a biological product is not an interchangeable biological product for the prescribed biological product; or

(C) the FDA has determined that a drug product of the same generic

name is not bioequivalent to the prescribed brand name prescription medication;

(2) a pharmacist may provide up to a three-month supply of a prescription drug that is not a controlled substance or psychotherapeutic drug when a practitioner has written a drug order to be filled with a smaller supply but included sufficient numbers of refills for a three-month supply; or

(3) except for a prescription for a controlled substance, a pharmacist may use professional judgment to make the following adaptations to a prescription order if a patient consents, the prescriber has not indicated "dispense as written" on the prescription, the pharmacist documents the adaptation on the patient's prescription record and the pharmacist notifies the prescriber:

(A) Change the prescribed quantity if:

(i) The prescribed quantity or package size is not commercially available;

(ii) the change in quantity is related to a change in dosage form; or

(iii) the change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program;

(B) change the prescribed dosage form, strength or directions for use if it is in the best interest of the patient and the change achieves the intent of the prescriber; or

(C) complete missing information on the prescription order if there is evidence to support the change.

(h) A pharmacist who selects an interchangeable biological product shall inform the patient or the patient's representative that an interchangeable biological product has been substituted for the prescribed biological product.

(i) If a prescription order contains a statement that during any particular time the prescription may be refilled at will, there shall be no limitation as to the number of times that such prescription may be refilled, except that it may not be refilled after the expiration of the time specified or one year after the prescription was originally issued, whichever occurs first.

(j) Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the prescriber, shall bear the full name of the individual so telephoning. Nothing in this section shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.

(k) (1) Except as provided in paragraph (2), no prescription shall be

refilled unless authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filled by the pharmacist.

(2) A pharmacist may refill a prescription order issued on or after the effective date of this act for any prescription drug, except a drug listed on schedule II of the uniform controlled substances act or a narcotic drug listed on any schedule of the uniform controlled substances act, without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety and welfare. Such prescription refill shall only be in an amount judged by the pharmacist to be sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this paragraph be more than a 30-day supply or one package of the drug. However, if the prescriber states on a prescription that there shall be no emergency refilling of that prescription, then the pharmacist shall not dispense any emergency medication pursuant to that prescription. A pharmacist who refills a prescription order under this paragraph shall contact the prescriber of the prescription order on the next business day subsequent to the refill or as soon thereafter as possible. No pharmacist shall be required to refill any prescription order under this paragraph. A prescriber shall not be subject to liability for any damages resulting from the refilling of a prescription order by a pharmacist under this paragraph unless such damages are occasioned by the gross negligence or willful or wanton acts or omissions by the prescriber.

(l) If any prescription order contains a provision that the prescription may be refilled a specific number of times within or during any particular period, such prescription shall not be refilled except in strict conformity with such requirements.

(m) Any pharmacist who exercises brand exchange and dispenses a less expensive drug product shall not charge the purchaser more than the regular and customary retail price for the dispensed drug.

(n) Except as provided in K.S.A. 65-1635(e), and amendments thereto, and as may otherwise be provided by law, nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if, in the pharmacist's professional judgment and discretion, such pharmacist is of the opinion that it should not be filled or refilled*, unless such prescription is being used to treat or prevent a COVID-19 infection*.

(o) Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be

conveyed by making an entry that is electronically accessible to the prescriber through:

(1) An interoperable electronic medical records system;

(2) an electronic prescribing technology;

(3) a pharmacy benefits management system; or

(4) a pharmacy record.

(p) Entry into an electronic records system as described in subsection (o) shall be presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission or other prevailing means, provided that communication shall not be required where:

(1) There is no FDA-approved interchangeable biological product for the product prescribed; or

(2) a refill prescription is not changed from the product dispensed on the prior filling of the prescription.

(q) A pharmacist shall maintain a record of any biological product dispensed for at least five years.

(r) The board shall maintain a link on its website to the current lists of all biological products that the FDA has determined to be interchangeable biological products.

Sec. 4. K.S.A. 72-6262 is hereby amended to read as follows: 72-6262. (a) In each school year, every ~~pupil~~ *student* enrolling or enrolled in any school for the first time in this state, and each child enrolling or enrolled for the first time in a preschool or day care program operated by a school, and such other ~~pupils~~ *students* as may be designated by the secretary, prior to admission to and attendance at school, shall present to the appropriate school board certification from a physician or local health department that the ~~pupil~~ *student* has received such tests and inoculations as are deemed necessary by the secretary by such means as are approved by the secretary. ~~Pupils~~ *Students* who have not completed the required inoculations may enroll or remain enrolled while completing the required inoculations if a physician or local health department certifies that the ~~pupil~~ *student* has received the most recent appropriate inoculations in all required series. Failure to timely complete all required series shall be deemed non-compliance.

(b) As an alternative to the certification required under subsection (a), a ~~pupil~~ *student* shall present:

(1) An annual written statement signed by a licensed physician stating the physical condition of the child to be such that the tests or inoculations would seriously endanger the life or health of the child~~,~~*;* or

(2) a written statement signed by one parent or guardian that the *requirement would violate sincerely held religious beliefs of the* child ~~is an~~

~~adherent of a religious denomination whose religious teachings are opposed to such tests or inoculations~~.

(c) *The board of education of a school district shall grant an exemption requested in accordance with subsection (b) based on sincerely held religious beliefs without inquiring into the sincerity of the request.*

(d) On or before May 15 of each school year, the school board of every school affected by this act shall notify the parents or guardians of all known ~~pupils~~ *students* who are enrolled or who will be enrolling in the school of the provisions this act and any policy regarding the implementation of the provisions of this act adopted by the school board.

~~(d)~~*(e)* If a ~~pupil~~ *student* transfers from one school to another, the school from which the ~~pupil~~ *student* transfers shall forward with the ~~pupil's~~ *student's* transcript the certification or statement showing evidence of compliance with the requirements of this act to the school to which the ~~pupil~~ *student* transfers.

(f) As used in this section, "religious beliefs" includes, but is not limited to, theistic and non-theistic moral and ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views.

Sec. 5. K.S.A. 65-508 and 72-6262 and K.S.A. 2021 Supp. 65-1637 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.