

## SENATE Substitute for HOUSE BILL No. 2423

By Committee on Ways and Means

3-26

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9 AN ACT relating to the board of pharmacy; concerning continuous qual-  
10 ity improvement programs and nonresident pharmacy; amending  
11 K.S.A. 65-1657 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) No later than July 1, 2009, each pharmacy shall  
15 establish a continuous quality improvement (CQI) program. The purpose  
16 of the CQI program shall be to assess errors that occur in the pharmacy  
17 in dispensing or furnishing prescription medications so that the pharmacy  
18 may take appropriate action to prevent a recurrence.

19 (b) Reports, memoranda, proceedings, findings and other records  
20 generated as part of a pharmacy's CQI program shall be considered con-  
21 fidential and privileged peer review documents and not subject to dis-  
22 covery, subpoena or other means of legal compulsion for their release to  
23 any person or entity and shall not be admissible in any civil or adminis-  
24 trative action other than an administrative proceeding initiated by the  
25 board of pharmacy. Nothing in this section shall be construed to prohibit  
26 a patient from accessing such patient's own prescription records. Nothing  
27 in this section shall affect the discoverability of any record not solely  
28 generated for or maintained as a part of a pharmacy's CQI program.

29 (c) No person in attendance at any meeting being conducted as part  
30 of a CQI program shall be compelled to testify in any civil, criminal or  
31 administrative action, other than an administrative proceeding initiated  
32 by the board of pharmacy as to any discussions or decisions which oc-  
33 curred as part of the CQI program.

34 (d) All reports and records generated as part of a pharmacy's CQI  
35 program shall be available for inspection by the board of pharmacy within  
36 a time period established by the board in rules and regulations.

37 (e) In conducting a disciplinary proceeding in which admission of any  
38 matters that are confidential and privileged under subsection (b) are pro-  
39 posed, the board of pharmacy shall hold the hearing in closed session  
40 when any report, record or testimony is disclosed. Unless otherwise pro-  
41 vided by law, the board of pharmacy in conducting a disciplinary pro-  
42 ceeding may close only that portion of the hearing in which disclosure of  
43 such privileged matters are proposed. In closing a portion of a hearing as

1 provided in this subsection, the presiding officer may exclude any person  
2 from the hearing except members of the board, the licensee, the li-  
3 censee's attorney, the agency's attorney, the witness, the court reporter  
4 and appropriate staff support for either counsel.

5 The board of pharmacy shall make the portions of the administrative  
6 record in which such privileged matters are disclosed subject to a pro-  
7 tective order prohibiting further disclosure. Such privileged matters shall  
8 not be subject to discovery, subpoena or other means of legal compulsion  
9 for their release to any person or entity. No person in attendance at a  
10 closed portion of a disciplinary proceeding shall be required to testify at  
11 a subsequent civil, criminal or administrative hearing regarding the priv-  
12 ileged matters, nor shall such testimony be admitted into evidence in any  
13 subsequent civil, criminal or administrative hearing.

14 The board of pharmacy may review any matters that are confidential  
15 and privileged under subsection (b), testimony or reports in conducting  
16 a disciplinary proceeding but must prove its findings with independently  
17 obtained testimony or records which shall be presented as part of the  
18 disciplinary proceeding in an open meeting of the board of pharmacy.  
19 Offering such testimony or records in an open public hearing shall not  
20 be deemed a waiver of the peer review privilege relating to any peer  
21 review committee testimony, record or report.

22 (f) The board may establish by rules and regulations requirements  
23 regarding the functions and record keeping of a pharmacy CQI program.

24 (g) This section shall be part of and supplemental to the pharmacy  
25 act of the state of Kansas.

26 Sec. 2. K.S.A. 65-1657 is hereby amended to read as follows: 65-  
27 1657. (a) No nonresident pharmacy shall ship, mail or deliver, in any  
28 manner, prescription drugs to a patient in this state unless registered  
29 under this section as a nonresident pharmacy. Applications for a nonres-  
30 ident pharmacy registration under this section shall be made on a form  
31 furnished by the board. A nonresident pharmacy registration shall be  
32 granted for a period of one year upon compliance by the nonresident  
33 pharmacy with the provisions of this section and rules and regulations  
34 adopted pursuant to this section and upon payment of the registration  
35 fee established under K.S.A. 65-1645, and amendments thereto, for a  
36 pharmacy registration. A nonresident pharmacy registration shall be re-  
37 newed annually on forms provided by the board, upon compliance by the  
38 nonresident pharmacy with the provisions of this section and rules and  
39 regulations adopted pursuant to this section and upon payment of the  
40 renewal fee established under K.S.A. 65-1645, and amendments thereto,  
41 for the renewal of a pharmacy registration.

42 (b) As conditions for the granting of a registration and for the renewal  
43 of a registration for a nonresident pharmacy, the nonresident pharmacy

1 shall comply with the following:

2 (1) Provide information to the board to indicate the person or persons  
3 applying for the registration, the location of the pharmacy from which  
4 the prescription drugs will be dispensed, the names and titles of all prin-  
5 cipal owners and corporate officers, if any, and the names of all phar-  
6 macists dispensing prescription drugs to residents of Kansas;

7 (2) be registered and in good standing in the state in which such  
8 pharmacy is located;

9 (3) maintain, in readily retrievable form, records of prescription drugs  
10 dispensed to Kansas patients;

11 (4) supply upon request, all information needed by the board to carry  
12 out the board's responsibilities under this section and rules and regula-  
13 tions adopted pursuant to this section;

14 (5) maintain pharmacy hours that permit the timely dispensing of  
15 drugs to Kansas patients and provide reasonable access for the patients  
16 to consult with a licensed pharmacist about such patients' medications;

17 (6) provide toll-free telephone communication consultation between  
18 a Kansas patient and a pharmacist at the pharmacy who has access to the  
19 patient's records, and ensure that the telephone number(s) will be placed  
20 upon the label affixed to each prescription drug container dispensed in  
21 Kansas; and

22 (7) provide to the board such other information as the board may  
23 reasonably request to administer the provisions of this section.

24 (c) *When any nonresident pharmacy fails to supply requested infor-*  
25 *mation to the board or fails to respond to proper inquiry of the board,*  
26 *after receiving notice by certified mail, the board may assess a civil fine*  
27 *in accordance with the provisions in K.S.A. 65-1658, and amendments*  
28 *thereto.*

29 ~~(c)~~ (d) Each nonresident pharmacy shall comply with the following  
30 unless compliance would be in conflict with specific laws or rules and  
31 regulations of the state in which the pharmacy is located:

32 (1) All statutory and regulatory requirements of Kansas for controlled  
33 substances, including those that are different from federal law;

34 (2) labeling of all prescriptions dispensed, to include but not be lim-  
35 ited to identification of the product and quantity dispensed;

36 (3) all the statutory and regulatory requirements of Kansas for dis-  
37 pensing prescriptions in accordance with the quantities indicated by the  
38 prescriber; and

39 (4) the Kansas law regarding the maintenance and use of the patient  
40 medication profile record system.

41 ~~(d)~~ (e) In addition to subsection ~~(c)~~ (d) requirements, each nonresi-  
42 dent pharmacy shall comply with all the statutory and regulatory require-  
43 ments of Kansas regarding drug product selection laws whether or not

1 such compliance would be in conflict with specific laws or rules and reg-  
2 ulations of the state in which the pharmacy is located, except that com-  
3 pliance which constitutes only a minor conflict with specific laws or rules  
4 and regulations of the state in which the pharmacy is located would not  
5 be required under this subsection.

6 ~~(e)~~ (f) Each nonresident pharmacy shall develop and provide the  
7 board with a policy and procedure manual that sets forth:

8 (1) Normal delivery protocols and times;  
9 (2) the procedure to be followed if the patient's medication is not  
10 available at the nonresident pharmacy, or if delivery will be delayed be-  
11 yond the normal delivery time;  
12 (3) the procedure to be followed upon receipt of a prescription for  
13 an acute illness, which policy shall include a procedure for delivery of the  
14 medication to the patient from the nonresident pharmacy at the earliest  
15 possible time, or an alternative that assures the patient the opportunity  
16 to obtain the medication at the earliest possible time; and  
17 (4) the procedure to be followed when the nonresident pharmacy is  
18 advised that the patient's medication has not been received within the  
19 normal delivery time and that the patient is out of medication and re-  
20 quires interim dosage until mailed prescription drugs become available.

21 ~~(f)~~ (g) Except in emergencies that constitute an immediate threat to  
22 the public health and require prompt action by the board, the board may  
23 file a complaint against any nonresident pharmacy that violates any pro-  
24 vision of this section. This complaint shall be filed with the regulatory or  
25 licensing agency of the state in which the nonresident pharmacy is lo-  
26 cated. If the regulatory or licensing agency of the state in which the non-  
27 resident pharmacy is located fails to resolve the violation complained of  
28 within a reasonable time, not less than 180 days from the date that the  
29 complaint is filed, disciplinary proceedings may be initiated by the board.  
30 The board also may initiate disciplinary actions against a nonresident  
31 pharmacy if the regulatory or licensing agency of the state in which the  
32 nonresident pharmacy is located lacks or fails to exercise jurisdiction.

33 ~~(g)~~ (h) The board shall adopt rules and regulations that make excep-  
34 tions to the requirement of registration by a nonresident pharmacy when  
35 the out-of-state pharmacy supplies lawful refills to a patient from a pre-  
36 scription that was originally filled and delivered to a patient within the  
37 state in which the nonresident pharmacy is located, or when the prescrip-  
38 tions being mailed into the state of Kansas by a nonresident pharmacy  
39 occurs only in isolated transactions. In determining whether the prescrip-  
40 tions being mailed into the state of Kansas by a nonresident pharmacy  
41 are isolated transactions, the board shall consider whether the pharmacy  
42 has promoted its services in this state and whether the pharmacy has a  
43 contract with any employer or organization to provide pharmacy services

1 to employees or other beneficiaries in this state.  
2 ~~(h)~~ (i) It is unlawful for any nonresident pharmacy which is not reg-  
3 istered under this act to advertise its services in this state, or for any  
4 person who is a resident of this state to advertise the pharmacy services  
5 of a nonresident pharmacy which has not registered with the board, with  
6 the knowledge that the advertisement will or is likely to induce members  
7 of the public in this state to use the pharmacy to fill prescriptions. A  
8 violation of this section is a class C misdemeanor.  
9 ~~(i)~~ (j) Upon request of the board, the attorney general may bring an  
10 action in a court of competent jurisdiction for injunctive relief to restrain  
11 a violation of the provisions of this section or any rules and regulations  
12 adopted by the board under authority of this section. The remedy pro-  
13 vided under this subsection shall be in addition to any other remedy  
14 provided under this section or under the pharmacy act of the state of  
15 Kansas.  
16 ~~(j)~~ (k) The board may adopt rules and regulations as necessary and  
17 as are consistent with this section to carry out the provisions of this  
18 section.  
19 ~~(k)~~ (l) The executive secretary of the board shall remit all moneys  
20 received from fees under this section to the state treasurer in accordance  
21 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
22 receipt of each such remittance, the state treasurer shall deposit the entire  
23 amount in the manner specified under K.S.A. 74-1609, and amendments  
24 thereto.  
25 ~~(l)~~ (m) This section shall be part of and supplemental to the pharmacy  
26 act of the state of Kansas.  
27 Sec. 3. K.S.A. 65-1657 is hereby repealed.  
28 Sec. 4. This act shall take effect and be in force from and after its  
29 publication in the statute book.