

As Amended by House Committee

Session of 2008

Substitute for SENATE BILL No. 549

By Committee on Public Health and Welfare

2-22

10 AN ACT relating to the board of pharmacy; concerning continuous qual-
11 ity improvement programs and nonresident pharmacy; amending
12 K.S.A. 65-1657 and repealing the existing section.
13

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

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

20 (b) ~~Reports and records~~ **Reports, memoranda, proceedings, find-**
21 **ings and other records** generated as part of a pharmacy's CQI program
22 shall be considered confidential and privileged peer review documents
23 and not subject to discovery, subpoena or other means of legal compulsion
24 for their release to any person or entity and shall not be admissible in any
25 civil or administrative action other than an administrative proceeding in-
26 itiated by the board of pharmacy. Nothing in this section shall be con-
27 strued to prohibit a patient from accessing such patient's own prescription
28 records. Nothing in this section shall affect the discoverability of any rec-
29 ord not solely generated for or maintained as a part of a pharmacy's CQI
30 program.

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

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

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

1 ceeding may close only that portion of the hearing in which disclosure of
2 such privileged matters are proposed. In closing a portion of a hearing as
3 provided in this subsection, the presiding officer may exclude any person
4 from the hearing except **members of the board**, the licensee, the li-
5 censee's attorney, the agency's attorney, the witness, the court reporter
6 and appropriate staff support for either counsel.

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

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

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

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

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

- 1 for the renewal of a pharmacy registration.
- 2 (b) As conditions for the granting of a registration and for the renewal
3 of a registration for a nonresident pharmacy, the nonresident pharmacy
4 shall comply with the following:
- 5 (1) Provide information to the board to indicate the person or persons
6 applying for the registration, the location of the pharmacy from which
7 the prescription drugs will be dispensed, the names and titles of all prin-
8 cipal owners and corporate officers, if any, and the names of all phar-
9 macists dispensing prescription drugs to residents of Kansas;
- 10 (2) be registered and in good standing in the state in which such
11 pharmacy is located;
- 12 (3) maintain, in readily retrievable form, records of prescription drugs
13 dispensed to Kansas patients;
- 14 (4) supply upon request, all information needed by the board to carry
15 out the board's responsibilities under this section and rules and regula-
16 tions adopted pursuant to this section;
- 17 (5) maintain pharmacy hours that permit the timely dispensing of
18 drugs to Kansas patients and provide reasonable access for the patients
19 to consult with a licensed pharmacist about such patients' medications;
- 20 (6) provide toll-free telephone communication consultation between
21 a Kansas patient and a pharmacist at the pharmacy who has access to the
22 patient's records, and ensure that the telephone number(s) will be placed
23 upon the label affixed to each prescription drug container dispensed in
24 Kansas; and
- 25 (7) provide to the board such other information as the board may
26 reasonably request to administer the provisions of this section.
- 27 (c) *When any nonresident pharmacy fails to supply requested infor-*
28 *mation to the board or fails to respond to proper inquiry of the board,*
29 *after receiving notice by certified mail, the board may assess a civil fine*
30 *in accordance with the provisions in K.S.A. 65-1658, and amendments*
31 *thereto.*
- 32 ~~(c)~~ (d) Each nonresident pharmacy shall comply with the following
33 unless compliance would be in conflict with specific laws or rules and
34 regulations of the state in which the pharmacy is located:
- 35 (1) All statutory and regulatory requirements of Kansas for controlled
36 substances, including those that are different from federal law;
- 37 (2) labeling of all prescriptions dispensed, to include but not be lim-
38 ited to identification of the product and quantity dispensed;
- 39 (3) all the statutory and regulatory requirements of Kansas for dis-
40 pensing prescriptions in accordance with the quantities indicated by the
41 prescriber; and
- 42 (4) the Kansas law regarding the maintenance and use of the patient
43 medication profile record system.

1 ~~(d)~~ (e) In addition to subsection (c) requirements, each nonresident
2 pharmacy shall comply with all the statutory and regulatory requirements
3 of Kansas regarding drug product selection laws whether or not such
4 compliance would be in conflict with specific laws or rules and regulations
5 of the state in which the pharmacy is located, except that compliance
6 which constitutes only a minor conflict with specific laws or rules and
7 regulations of the state in which the pharmacy is located would not be
8 required under this subsection.

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

11 (1) Normal delivery protocols and times;

12 (2) the procedure to be followed if the patient's medication is not
13 available at the nonresident pharmacy, or if delivery will be delayed be-
14 yond the normal delivery time;

15 (3) the procedure to be followed upon receipt of a prescription for
16 an acute illness, which policy shall include a procedure for delivery of the
17 medication to the patient from the nonresident pharmacy at the earliest
18 possible time, or an alternative that assures the patient the opportunity
19 to obtain the medication at the earliest possible time; and

20 (4) the procedure to be followed when the nonresident pharmacy is
21 advised that the patient's medication has not been received within the
22 normal delivery time and that the patient is out of medication and re-
23 quires interim dosage until mailed prescription drugs become available.

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

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

1 are isolated transactions, the board shall consider whether the pharmacy
2 has promoted its services in this state and whether the pharmacy has a
3 contract with any employer or organization to provide pharmacy services
4 to employees or other beneficiaries in this state.

5 ~~(h)~~ (i) It is unlawful for any nonresident pharmacy which is not reg-
6 istered under this act to advertise its services in this state, or for any
7 person who is a resident of this state to advertise the pharmacy services
8 of a nonresident pharmacy which has not registered with the board, with
9 the knowledge that the advertisement will or is likely to induce members
10 of the public in this state to use the pharmacy to fill prescriptions. A
11 violation of this section is a class C misdemeanor.

12 ~~(i)~~ (j) Upon request of the board, the attorney general may bring an
13 action in a court of competent jurisdiction for injunctive relief to restrain
14 a violation of the provisions of this section or any rules and regulations
15 adopted by the board under authority of this section. The remedy pro-
16 vided under this subsection shall be in addition to any other remedy
17 provided under this section or under the pharmacy act of the state of
18 Kansas.

19 ~~(j)~~ (k) The board may adopt rules and regulations as necessary and
20 as are consistent with this section to carry out the provisions of this
21 section.

22 ~~(k)~~ (l) The executive secretary of the board shall remit all moneys
23 received from fees under this section to the state treasurer in accordance
24 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
25 receipt of each such remittance, the state treasurer shall deposit the entire
26 amount in the manner specified under K.S.A. 74-1609, and amendments
27 thereto.

28 ~~(l)~~ (m) This section shall be part of and supplemental to the pharmacy
29 act of the state of Kansas.

30 Sec. 3. K.S.A. 65-1657 is hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the statute book.