

**Introduced by Senator Hernandez**February 18, 2014

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An act to amend Section 4115 of, and to add Sections 4119.6 and 4119.7 to, the Business and Professions Code, and to amend Section 11150 of the Health and Safety Code, relating to pharmacies.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1039, as introduced, Hernandez. Pharmacies: furnishing drugs.

(1) Existing law, the Pharmacy Law, the violation of which is a crime, provides for the licensing and regulation of pharmacies, pharmacists, intern pharmacists, and pharmacy technicians by the California State Board of Pharmacy. The Pharmacy Law authorizes an intern pharmacist to perform all functions of a pharmacist, and authorizes a pharmacy technician to perform packaging, manipulative, repetitive, or other nondiscretionary tasks, in each case under supervision of a pharmacist, as specified.

This bill would authorize a pharmacy technician to perform packaging, including emergency supply packaging and sealing in or for hospitals, hospital unit inspections, and other physical, manipulative, repetitive, or other nondiscretionary tasks under supervision of a pharmacist, as specified.

Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(2) Existing law authorizes a pharmacy to furnish a dangerous drug or dangerous device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Public Health and other existing law requirements, as specified.

This bill would authorize a pharmacy to furnish a dangerous drug or dangerous device to the emergency medical services system of a licensed general acute care hospital, as defined, for storage in a secured emergency pharmaceutical supplies container maintained within the hospital in accordance with the hospital's policies and procedures. The bill would require both the hospital and the dispensing pharmacy to maintain records pertaining to the dangerous drugs or dangerous devices furnished to the hospital's emergency medical services system for at least 3 years. The bill would also authorize a pharmacy to furnish a dangerous drug or dangerous device to a licensed general acute care hospital pursuant to preprinted or electronic standing orders, order sets, and protocols established under the policies and procedures of a licensed general acute care hospital under specified conditions. The bill would require a pharmacist, or a pharmacy technician or an intern pharmacist under the direct supervision of a pharmacist, to inspect the drugs maintained in the hospital at least once per month, and to report any irregularities, as specified.

Because a violation of these provisions would be a crime, the bill would create a state-mandated local program.

(3) Existing law authorizes a pharmacist to write or issue a prescription under specified circumstances, including in a health care facility in accordance with policies, procedures, or protocols developed by health professionals, with the concurrence of the facility administrator, or as part of the care provided by among others, a health care facility, a licensed home health agency, or a physician, in accordance with the policies, procedures, or protocols of that facility, home health agency, or physician.

This bill would authorize a pharmacist recognized by the board as an advanced practice pharmacist to write or issue a prescription when the pharmacist is performing functions within the scope of practice of an advanced practice pharmacist.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4115 of the Business and Professions  
2 Code is amended to read:

3 4115. (a) A pharmacy technician may perform packaging,  
4 *including emergency supply packaging and sealing in or for*  
5 *hospitals, hospital unit inspections, and other physical,*  
6 manipulative, repetitive, or other nondiscretionary tasks, only while  
7 assisting, and while under the direct supervision and control of a  
8 pharmacist.

9 (b) This section does not authorize the performance of any tasks  
10 specified in subdivision (a) by a pharmacy technician without a  
11 pharmacist on duty.

12 (c) This section does not authorize a pharmacy technician to  
13 perform any act requiring the exercise of professional judgment  
14 by a pharmacist.

15 (d) The board shall adopt regulations to specify tasks pursuant  
16 to subdivision (a) that a pharmacy technician may perform under  
17 the supervision of a pharmacist. Any pharmacy that employs a  
18 pharmacy technician shall do so in conformity with the regulations  
19 adopted by the board.

20 (e) No person shall act as a pharmacy technician without first  
21 being licensed by the board as a pharmacy technician.

22 (f) (1) A pharmacy with only one pharmacist shall have no  
23 more than one pharmacy technician performing the tasks specified  
24 in subdivision (a). The ratio of pharmacy technicians performing  
25 the tasks specified in subdivision (a) to any additional pharmacist  
26 shall not exceed 2:1, except that this ratio shall not apply to  
27 personnel performing clerical functions pursuant to Section 4116  
28 or 4117. This ratio is applicable to all practice settings, except for  
29 an inpatient of a licensed health facility, a patient of a licensed  
30 home health agency, as specified in paragraph (2), an inmate of a  
31 correctional facility of the Department of Corrections and  
32 Rehabilitation, and for a person receiving treatment in a facility  
33 operated by the State Department of State Hospitals, the State  
34 Department of Developmental Services, or the Department of  
35 Veterans Affairs.

36 (2) The board may adopt regulations establishing the ratio of  
37 pharmacy technicians performing the tasks specified in subdivision  
38 (a) to pharmacists applicable to the filling of prescriptions of an

1 inpatient of a licensed health facility and for a patient of a licensed  
2 home health agency. Any ratio established by the board pursuant  
3 to this subdivision shall allow, at a minimum, at least one pharmacy  
4 technician for a single pharmacist in a pharmacy and two pharmacy  
5 technicians for each additional pharmacist, except that this ratio  
6 shall not apply to personnel performing clerical functions pursuant  
7 to Section 4116 or 4117.

8 (3) A pharmacist scheduled to supervise a second pharmacy  
9 technician may refuse to supervise a second pharmacy technician  
10 if the pharmacist determines, in the exercise of his or her  
11 professional judgment, that permitting the second pharmacy  
12 technician to be on duty would interfere with the effective  
13 performance of the pharmacist's responsibilities under this chapter.  
14 A pharmacist assigned to supervise a second pharmacy technician  
15 shall notify the pharmacist in charge in writing of his or her  
16 determination, specifying the circumstances of concern with respect  
17 to the pharmacy or the pharmacy technician that have led to the  
18 determination, within a reasonable period, but not to exceed 24  
19 hours, after the posting of the relevant schedule. No entity  
20 employing a pharmacist may discharge, discipline, or otherwise  
21 discriminate against any pharmacist in the terms and conditions  
22 of employment for exercising or attempting to exercise in good  
23 faith the right established pursuant to this paragraph.

24 (g) Notwithstanding subdivisions (a) and (b), the board shall  
25 by regulation establish conditions to permit the temporary absence  
26 of a pharmacist for breaks and lunch periods pursuant to Section  
27 512 of the Labor Code and the orders of the Industrial Welfare  
28 Commission without closing the pharmacy. During these temporary  
29 absences, a pharmacy technician may, at the discretion of the  
30 pharmacist, remain in the pharmacy but may only perform  
31 nondiscretionary tasks. The pharmacist shall be responsible for a  
32 pharmacy technician and shall review any task performed by a  
33 pharmacy technician during the pharmacist's temporary absence.  
34 Nothing in this subdivision shall be construed to authorize a  
35 pharmacist to supervise pharmacy technicians in greater ratios  
36 than those described in subdivision (f).

37 (h) The pharmacist on duty shall be directly responsible for the  
38 conduct of a pharmacy technician supervised by that pharmacist.

39 SEC. 2. Section 4119.6 is added to the Business and Professions  
40 Code, to read:

1 4119.6. (a) Notwithstanding any other law, a pharmacy may  
2 furnish a dangerous drug or dangerous device to the emergency  
3 medical services system of a licensed general acute care hospital,  
4 as defined in subdivision (a) of Section 1250 of the Health and  
5 Safety Code, for storage in a secured emergency pharmaceutical  
6 supplies container maintained within the hospital in accordance  
7 with the hospital's policies and procedures. A pharmacy technician  
8 or intern pharmacist under the direct supervision of a pharmacist  
9 may stock, replenish, and inspect the hospital's emergency  
10 pharmaceutical supplies container.

11 (b) Both the hospital and the dispensing pharmacy shall maintain  
12 records of each request by, and dangerous drugs or dangerous  
13 devices furnished to, the hospital's emergency medical services  
14 system, for at least three years.

15 (c) Controlled substances shall be furnished to the hospital's  
16 emergency medical services system in accordance with the  
17 California Uniform Controlled Substances Act (Division 10  
18 (commencing with Section 11000) of the Health and Safety Code).

19 SEC. 3. Section 4119.7 is added to the Business and Professions  
20 Code, to read:

21 4119.7. (a) Notwithstanding any other law, a pharmacy may  
22 furnish a dangerous drug or dangerous device to a licensed general  
23 acute care hospital, as defined in subdivision (a) of Section 1250  
24 of the Health and Safety Code, pursuant to preprinted or electronic  
25 standing orders, order sets, and protocols established under the  
26 policies and procedures of the hospital, as approved according to  
27 the policies of the hospital's governing body, if the order is  
28 promptly dated, timed, and authenticated in the medical record of  
29 the patient to whom the dangerous drug or dangerous device is  
30 dispensed by the ordering practitioner or another practitioner  
31 responsible for the care of that patient and authorized by the  
32 hospital's policies and procedures to write orders.

33 (b) The hospital shall store and maintain drugs in accordance  
34 with national standards regarding the storage area and refrigerator  
35 or freezer temperature, and otherwise pursuant to the  
36 manufacturer's guidelines.

37 (c) (1) A pharmacist, pharmacy technician, or an intern  
38 pharmacist under the direct supervision of a pharmacist, shall  
39 inspect the drugs maintained in the hospital at least once per month.

1 The hospital shall establish specific written policies and procedures  
2 for inspections pursuant to this paragraph.

3 (2) The person conducting the inspection pursuant to paragraph  
4 (1) shall report any irregularities to the director or chief executive  
5 officer of the hospital, or other person holding an equivalent  
6 position, and in accordance with the hospital's policy.

7 (d) The hospital shall adopt policies and procedures regarding  
8 the responsibility for assuring proper methods for repackaging and  
9 labeling of bulk cleaning agents, solvents, chemicals, and nondrug  
10 hazardous substances used throughout the hospital according to  
11 state and federal law and standards.

12 SEC. 4. Section 11150 of the Health and Safety Code is  
13 amended to read:

14 11150. No person other than a physician, dentist, podiatrist,  
15 or veterinarian, or naturopathic doctor acting pursuant to Section  
16 3640.7 of the Business and Professions Code, or pharmacist acting  
17 within the scope of a project authorized under Article 1  
18 (commencing with Section 128125) of Chapter 3 of Part 3 of  
19 Division 107 or within the scope of ~~either~~ Section 4052.1 ~~or~~,  
20 4052.2, *or* 4052.6 of the Business and Professions Code, a  
21 registered nurse acting within the scope of a project authorized  
22 under Article 1 (commencing with Section 128125) of Chapter 3  
23 of Part 3 of Division 107, a certified nurse-midwife acting within  
24 the scope of Section 2746.51 of the Business and Professions Code,  
25 a nurse practitioner acting within the scope of Section 2836.1 of  
26 the Business and Professions Code, a physician assistant acting  
27 within the scope of a project authorized under Article 1  
28 (commencing with Section 128125) of Chapter 3 of Part 3 of  
29 Division 107 or Section 3502.1 of the Business and Professions  
30 Code, a naturopathic doctor acting within the scope of Section  
31 3640.5 of the Business and Professions Code, or an optometrist  
32 acting within the scope of Section 3041 of the Business and  
33 Professions Code, or an out-of-state prescriber acting pursuant to  
34 Section 4005 of the Business and Professions Code shall write or  
35 issue a prescription.

36 SEC. 5. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of  
2 the Government Code, or changes the definition of a crime within  
3 the meaning of Section 6 of Article XIII B of the California  
4 Constitution.

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