

AMENDED IN SENATE MAY 5, 2014
AMENDED IN SENATE APRIL 10, 2014
AMENDED IN SENATE MARCH 28, 2014

SENATE BILL

No. 1039

Introduced by Senator Hernandez

February 18, 2014

An act to amend Sections 4052.6 and 4115 of, and to add Sections 4119.6 and 4119.7 to, the Business and Professions Code, and to amend Sections 11150 and 11210 of, *and to add Section 1250.06 to*, the Health and Safety Code, relating to pharmacies.

LEGISLATIVE COUNSEL'S DIGEST

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

(1) Existing law, the Pharmacy Law, the violation of which is a crime, provides for the licensure 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.

(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, a pharmacy technician, or an intern pharmacist, under the direct supervision and control of a pharmacist, to inspect the drugs maintained in the hospital at least once per month, and to report any irregularities, as specified. ~~The bill would also require a hospital to adopt policies and procedures for ensuring proper methods for repackaging and labeling of specified substances.~~

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

(3) Existing law authorizes a pharmacist recognized by the board as an advanced practice pharmacist to perform specified functions, including performing patient assessments.

This bill would also authorize a pharmacist recognized by the board as an advanced practice pharmacist to order patient assessments.

(4) Existing law authorizes a pharmacist to initiate or adjust the drug regimen of a patient under specified circumstances. Existing law authorizes specified practitioners, including a pharmacist acting within the scope of an authorized pilot project, to prescribe, furnish, or administer controlled substances to a patient suffering from a disease, ailment, injury, or infirmity, but only when in good faith he or she believes the disease, ailment, injury, or infirmity requires the treatment, and only in the quantity and for the length of time as reasonably necessary.

This bill would modify that list of practitioners to include a pharmacist initiating or adjusting the drug regimen of a patient as authorized under existing law.

(5) Existing law provides for the licensure and inspection of health facilities, including general acute care hospitals, by the State Department of Public Health. A violation of these provisions is a misdemeanor punishable by a fine or imprisonment, or by both a fine and imprisonment.

This bill would require a licensed general acute care hospital, as defined, to adopt policies and procedures for ensuring proper methods of repackaging and labeling bulk cleaning agents, solvents, chemicals, and nondrug hazardous substances according to state and federal law.

By expanding the scope of an existing crime, this bill would create a state-mandated local program.

(5)

(6) 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 4052.6 of the Business and Professions
- 2 Code is amended to read:
- 3 4052.6. (a) A pharmacist recognized by the board as an
- 4 advanced practice pharmacist may do all of the following:
- 5 (1) Order and perform patient assessments.
- 6 (2) Order and interpret drug therapy-related tests.
- 7 (3) Refer patients to other health care providers.
- 8 (4) Participate in the evaluation and management of diseases
- 9 and health conditions in collaboration with other health care
- 10 providers.
- 11 (5) Initiate, adjust, or discontinue drug therapy in the manner
- 12 specified in paragraph (4) of subdivision (a) of Section 4052.2.
- 13 (b) A pharmacist who adjusts or discontinues drug therapy shall
- 14 promptly transmit written notification to the patient’s diagnosing
- 15 prescriber or enter the appropriate information in a patient record

1 system shared with the prescriber, as permitted by that prescriber.
2 A pharmacist who initiates drug therapy shall promptly transmit
3 written notification to, or enter the appropriate information into,
4 a patient record system shared with the patient's primary care
5 provider or diagnosing provider, as permitted by that provider.

6 (c) This section shall not interfere with a physician's order to
7 dispense a prescription drug as written, or other order of similar
8 meaning.

9 (d) Prior to initiating or adjusting a controlled substance therapy
10 pursuant to this section, a pharmacist shall personally register with
11 the federal Drug Enforcement Administration.

12 (e) A pharmacist who orders and interprets tests pursuant to
13 paragraph (2) of subdivision (a) shall ensure that the ordering of
14 those tests is done in coordination with the patient's primary care
15 provider or diagnosing prescriber, as appropriate, including
16 promptly transmitting written notification to the patient's
17 diagnosing prescriber or entering the appropriate information in a
18 patient record system shared with the prescriber, when available
19 and as permitted by that prescriber.

20 SEC. 2. Section 4115 of the Business and Professions Code is
21 amended to read:

22 4115. (a) A pharmacy technician may perform packaging,
23 including emergency supply packaging and sealing in or for
24 hospitals, hospital unit inspections, and other physical,
25 manipulative, repetitive, or other nondiscretionary tasks, only while
26 assisting, and while under the direct supervision and control of a
27 pharmacist.

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

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

34 (d) The board shall adopt regulations to specify tasks pursuant
35 to subdivision (a) that a pharmacy technician may perform under
36 the supervision of a pharmacist. Any pharmacy that employs a
37 pharmacy technician shall do so in conformity with the regulations
38 adopted by the board.

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

1 (f) (1) A pharmacy with only one pharmacist shall have no
2 more than one pharmacy technician performing the tasks specified
3 in subdivision (a). The ratio of pharmacy technicians performing
4 the tasks specified in subdivision (a) to any additional pharmacist
5 shall not exceed 2:1, except that this ratio shall not apply to
6 personnel performing clerical functions pursuant to Section 4116
7 or 4117. This ratio is applicable to all practice settings, except for
8 an inpatient of a licensed health facility, a patient of a licensed
9 home health agency, as specified in paragraph (2), an inmate of a
10 correctional facility of the Department of Corrections and
11 Rehabilitation, and for a person receiving treatment in a facility
12 operated by the State Department of State Hospitals, the State
13 Department of Developmental Services, or the Department of
14 Veterans Affairs.

15 (2) The board may adopt regulations establishing the ratio of
16 pharmacy technicians performing the tasks specified in subdivision
17 (a) to pharmacists applicable to the filling of prescriptions of an
18 inpatient of a licensed health facility and for a patient of a licensed
19 home health agency. Any ratio established by the board pursuant
20 to this subdivision shall allow, at a minimum, at least one pharmacy
21 technician for a single pharmacist in a pharmacy and two pharmacy
22 technicians for each additional pharmacist, except that this ratio
23 shall not apply to personnel performing clerical functions pursuant
24 to Section 4116 or 4117.

25 (3) A pharmacist scheduled to supervise a second pharmacy
26 technician may refuse to supervise a second pharmacy technician
27 if the pharmacist determines, in the exercise of his or her
28 professional judgment, that permitting the second pharmacy
29 technician to be on duty would interfere with the effective
30 performance of the pharmacist's responsibilities under this chapter.
31 A pharmacist assigned to supervise a second pharmacy technician
32 shall notify the pharmacist in charge in writing of his or her
33 determination, specifying the circumstances of concern with respect
34 to the pharmacy or the pharmacy technician that have led to the
35 determination, within a reasonable period, but not to exceed 24
36 hours, after the posting of the relevant schedule. No entity
37 employing a pharmacist may discharge, discipline, or otherwise
38 discriminate against any pharmacist in the terms and conditions
39 of employment for exercising or attempting to exercise in good
40 faith the right established pursuant to this paragraph.

1 (g) Notwithstanding subdivisions (a) and (b), the board shall
2 by regulation establish conditions to permit the temporary absence
3 of a pharmacist for breaks and lunch periods pursuant to Section
4 512 of the Labor Code and the orders of the Industrial Welfare
5 Commission without closing the pharmacy. During these temporary
6 absences, a pharmacy technician may, at the discretion of the
7 pharmacist, remain in the pharmacy but may only perform
8 nondiscretionary tasks. The pharmacist shall be responsible for a
9 pharmacy technician and shall review any task performed by a
10 pharmacy technician during the pharmacist's temporary absence.
11 Nothing in this subdivision shall be construed to authorize a
12 pharmacist to supervise pharmacy technicians in greater ratios
13 than those described in subdivision (f).

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

16 SEC. 3. Section 4119.6 is added to the Business and Professions
17 Code, to read:

18 4119.6. (a) Notwithstanding any other law, a pharmacy may
19 furnish a dangerous drug or dangerous device to the emergency
20 medical services system of a licensed general acute care hospital,
21 as defined in subdivision (a) of Section 1250 of the Health and
22 Safety Code, for storage in a secured emergency pharmaceutical
23 supplies container maintained within the hospital in accordance
24 with the hospital's policies and procedures. A pharmacy technician
25 or intern pharmacist under the direct supervision and control, as
26 defined in Section 4023.5, of a pharmacist may stock, replenish,
27 and inspect the hospital's emergency pharmaceutical supplies
28 container.

29 (b) Both the hospital and the dispensing pharmacy acting under
30 this section shall maintain records of each request by, and
31 dangerous drugs or dangerous devices furnished to, the hospital's
32 emergency medical services system, for at least three years.

33 (c) Controlled substances shall be furnished to the hospital's
34 emergency medical services system under this section in
35 accordance with the California Uniform Controlled Substances
36 Act (Division 10 (commencing with Section 11000) of the Health
37 and Safety Code).

38 SEC. 4. Section 4119.7 is added to the Business and Professions
39 Code, to read:

1 4119.7. (a) Notwithstanding any other law, a pharmacy may
2 furnish a dangerous drug or dangerous device to a licensed general
3 acute care hospital, as defined in subdivision (a) of Section 1250
4 of the Health and Safety Code, pursuant to preprinted or electronic
5 standing orders, order sets, and protocols established under the
6 policies and procedures of the hospital, as approved according to
7 the policies of the hospital's governing body, if the order is
8 promptly dated, timed, and authenticated in the medical record of
9 the patient to whom the dangerous drug or dangerous device is
10 dispensed by the ordering practitioner or another practitioner
11 responsible for the care of that patient and authorized by the
12 hospital's policies and procedures to write orders.

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

17 (c) (1) A pharmacist, pharmacy technician, or an intern
18 pharmacist under the direct supervision and control, as defined in
19 Section 4023.5, of a pharmacist, shall inspect the drugs maintained
20 in the hospital at least once per month. The hospital shall establish
21 specific written policies and procedures for inspections pursuant
22 to this paragraph.

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

27 ~~(d) The hospital shall adopt policies and procedures regarding~~
28 ~~the responsibility for ensuring proper methods for repackaging~~
29 ~~and labeling of bulk cleaning agents, solvents, chemicals, and~~
30 ~~nondrug hazardous substances used throughout the hospital~~
31 ~~according to state and federal law and standards.~~

32 *SEC. 5. Section 1250.06 is added to the Health and Safety*
33 *Code, immediately following Section 1250.05, to read:*

34 *1250.06. A licensed general acute care hospital, as defined*
35 *pursuant to subdivision (a) of Section 1250, shall adopt policies*
36 *and procedures regarding the responsibility for ensuring proper*
37 *methods for repackaging and labeling of bulk cleaning agents,*
38 *solvents, chemicals, and nondrug hazardous substances used*
39 *throughout the hospital according to state and federal law and*
40 *standards.*

1 ~~SEC. 5.~~

2 *SEC. 6.* Section 11150 of the Health and Safety Code is
3 amended to read:

4 11150. No person other than a physician, dentist, podiatrist,
5 or veterinarian, or naturopathic doctor acting pursuant to Section
6 3640.7 of the Business and Professions Code, or pharmacist acting
7 within the scope of a project authorized under Article 1
8 (commencing with Section 128125) of Chapter 3 of Part 3 of
9 Division 107 or within the scope of Section 4052.1, 4052.2, or
10 4052.6 of the Business and Professions Code, a registered nurse
11 acting within the scope of a project authorized under Article 1
12 (commencing with Section 128125) of Chapter 3 of Part 3 of
13 Division 107, a certified nurse-midwife acting within the scope of
14 Section 2746.51 of the Business and Professions Code, a nurse
15 practitioner acting within the scope of Section 2836.1 of the
16 Business and Professions Code, a physician assistant acting within
17 the scope of a project authorized under Article 1 (commencing
18 with Section 128125) of Chapter 3 of Part 3 of Division 107 or
19 Section 3502.1 of the Business and Professions Code, a
20 naturopathic doctor acting within the scope of Section 3640.5 of
21 the Business and Professions Code, or an optometrist acting within
22 the scope of Section 3041 of the Business and Professions Code,
23 or an out-of-state prescriber acting pursuant to Section 4005 of the
24 Business and Professions Code shall write or issue a prescription.

25 ~~SEC. 6.~~

26 *SEC. 7.* Section 11210 of the Health and Safety Code is
27 amended to read:

28 11210. A physician, surgeon, dentist, veterinarian, naturopathic
29 doctor acting pursuant to Section 3640.7 of the Business and
30 Professions Code, or podiatrist, or pharmacist acting within the
31 scope of a project authorized under Article 1 (commencing with
32 Section 128125) of Chapter 3 of Part 3 of Division 107 or within
33 the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and
34 Professions Code, or registered nurse acting within the scope of a
35 project authorized under Article 1 (commencing with Section
36 128125) of Chapter 3 of Part 3 of Division 107, or physician
37 assistant acting within the scope of a project authorized under
38 Article 1 (commencing with Section 128125) of Chapter 3 of Part
39 3 of Division 107, or naturopathic doctor acting within the scope
40 of Section 3640.5 of the Business and Professions Code, or an

1 optometrist acting within the scope of Section 3041 of the Business
2 and Professions Code may prescribe for, furnish to, or administer
3 controlled substances to his or her patient when the patient is
4 suffering from a disease, ailment, injury, or infirmities attendant
5 upon old age, other than addiction to a controlled substance.

6 The physician, surgeon, dentist, veterinarian, naturopathic doctor
7 acting pursuant to Section 3640.7 of the Business and Professions
8 Code, or podiatrist, or pharmacist acting within the scope of a
9 project authorized under Article 1 (commencing with Section
10 128125) of Chapter 3 of Part 3 of Division 107 or within the scope
11 of Section 4052.1, 4052.2, or 4052.6 of the Business and
12 Professions Code, or registered nurse acting within the scope of a
13 project authorized under Article 1 (commencing with Section
14 128125) of Chapter 3 of Part 3 of Division 107, or physician
15 assistant acting within the scope of a project authorized under
16 Article 1 (commencing with Section 128125) of Chapter 3 of Part
17 3 of Division 107, or naturopathic doctor acting within the scope
18 of Section 3640.5 of the Business and Professions Code, or an
19 optometrist acting within the scope of Section 3041 of the Business
20 and Professions Code shall prescribe, furnish, or administer
21 controlled substances only when in good faith he or she believes
22 the disease, ailment, injury, or infirmity requires the treatment.

23 The physician, surgeon, dentist, veterinarian, or naturopathic
24 doctor acting pursuant to Section 3640.7 of the Business and
25 Professions Code, or podiatrist, or pharmacist acting within the
26 scope of a project authorized under Article 1 (commencing with
27 Section 128125) of Chapter 3 of Part 3 of Division 107 or within
28 the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and
29 Professions Code, or registered nurse acting within the scope of a
30 project authorized under Article 1 (commencing with Section
31 128125) of Chapter 3 of Part 3 of Division 107, or physician
32 assistant acting within the scope of a project authorized under
33 Article 1 (commencing with Section 128125) of Chapter 3 of Part
34 3 of Division 107, or a naturopathic doctor acting within the scope
35 of Section 3640.5 of the Business and Professions Code, or an
36 optometrist acting within the scope of Section 3041 of the Business
37 and Professions Code shall prescribe, furnish, or administer
38 controlled substances only in the quantity and for the length of
39 time as are reasonably necessary.

1 ~~SEC. 7.~~

2 SEC. 8. No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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