

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

House Bill 4332

BY DELEGATES ROHRBACH, FLEISCHAUER, LONGSTRETH,

SUMMERS AND FRICH

[Passed March 3, 2018; in effect ninety days from passage.]

1 AN ACT to amend and reenact §30-5-22 and §30-5-29 of the Code of West Virginia, 1931, as
2 amended, all relating to the pharmacy practice act; allowing home peritoneal renal dialysis
3 equipment and drugs to be distributed to patients with end state renal disease; providing
4 for payment by Medicaid under the current benefit structure; and exempting cashiers from
5 licensure under the Larry W. Border Pharmacy Practice Act.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS
AND PHARMACIES.**

§30-5-22. Pharmacies to be registered.

1 (a) A pharmacy, an ambulatory health care facility, and a charitable clinic pharmacy shall
2 register with the board.

3 (b) A person desiring to operate, maintain, open or establish a pharmacy shall register
4 with the board.

5 (c) To be eligible for a registration to operate, maintain, open or establish a pharmacy the
6 applicant shall:

7 (1) Submit a written application to the board;

8 (2) Pay all applicable fees;

9 (3) Designate a pharmacist-in-charge; and

10 (4) Successfully complete an inspection by the board.

11 (d) A separate application shall be made and separate registration issued for each
12 location.

13 (e) Registration is not transferable.

14 (f) Registration expire and shall be renewed annually.

15 (g) If a registration expires, the pharmacy shall be reinspected and an inspection fee is
16 required.

17 (h) A registrant shall employ a pharmacist-in-charge and operate in compliance with the
18 legislative rules governing the practice of pharmacist care and the operation of a pharmacy.

19 (i) The provisions of this section do not apply to the sale of nonprescription drugs which
20 are not required to be dispensed pursuant to a practitioner's prescription.

21 (j) The provisions of this section do not apply to the sale or distribution of dialysate, drugs
22 or devices necessary to perform home peritoneal renal dialysis to patients with end state renal
23 disease, provided the requirements of §30-5-29 of this code are met.

§30-5-29. Limitations of article.

1 (a) This article may not be construed to prevent, restrict or in any manner interfere with
2 the sale of nonnarcotic nonprescription drugs which may be lawfully sold without a prescription in
3 accordance with the United States Food, Drug and Cosmetic Act or the laws of this state, nor may
4 any legislative rule be adopted by the board which shall require the sale of nonprescription drugs
5 by a licensed pharmacist or in a pharmacy or which shall prevent, restrict or otherwise interfere
6 with the sale or distribution of such drugs by any retail merchant. The sale or distribution of
7 nonprescription drugs may not be deemed to be improperly engaging in the practice of pharmacist
8 care.

9 (b) This article may not be construed to interfere with any legally qualified practitioner of
10 medicine, dentistry or veterinary medicine, who is not the proprietor of the store for the dispensing
11 or retailing of drugs and who is not in the employ of such proprietor, in the compounding of his or
12 her own prescriptions or to prevent him or her from supplying to his or her patients such medicines
13 as he or she may deem proper, if such supply is not made as a sale.

14 (c) The exception provided in subsection (b) of this section does not apply to an
15 ambulatory health care facility: *Provided*, That a legally licensed and qualified practitioner of
16 medicine or dentistry may supply medicines to patients that he or she treats in a free clinic and
17 that he or she deems appropriate.

18 (d) This article may not be construed to prevent, restrict or in any manner interfere with
19 the sale or distribution of dialysate, drugs or devices necessary to perform home peritoneal renal
20 dialysis to patients with end state renal disease, nor may any legislative rule be adopted by the
21 board which shall require the sale or distribution of such peritoneal dialysis products by a licensed
22 pharmacist or in a pharmacy, provided the following criteria are met:

23 (1) The dialysate, drugs or devices are approved or cleared by the Food and Drug
24 Administration, as required by federal law.

25 (2) The dialysate, drugs or devices are lawfully held by a manufacturer or a manufacturer's
26 agent that has obtained the proper permit from the board as a manufacturer or wholesale
27 distributor, or third-party logistics provider.

28 (3) The dialysate, drugs or devices are held and delivered in their original, sealed
29 packaging from the manufacturing facility.

30 (4) The dialysate, drugs or devices are delivered only upon receipt of a physician's
31 prescription by a licensed pharmacy, and the transmittal of an order from the licensed pharmacy
32 to the manufacturer or the manufacturer's agent; and

33 (5) The manufacturer or a manufacturer's agent delivers the dialysate, drugs, or devices
34 directly to:

35 (A) A patient with chronic kidney failure, or his/her designee, for the patient's self-
36 administration of the dialysis therapy; or

37 (B) A health care provider or institution for administration or delivery of the dialysis therapy
38 to a patient with chronic kidney failure.

39 (e) The provisions of §30-5-29(d) of this code shall not alter the manner in which dialysate,
40 drugs, devices necessary to perform home peritoneal renal dialysis to patients with end state
41 renal disease are billed by Medicaid under the current pharmacy benefit structure.

42 (f) A person who handles a prescription drug only during the point of sale to provide the
43 prescription drug to a patient and accept payment is not subject to the licensure requirements of

44 this article. This handling process includes the cashier having access to the pharmacy's operating
45 system to verify unique information for each patient. A pharmacy may require an individual to
46 complete a criminal background check before he or she is hired.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor