

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2524

BY DELEGATES ATKINSON, HILL, D. JEFFRIES, HOLLEN,

FLEISCHAUER AND STAGGERS

[Originating in the House Committee on Health and

Human Resources; January 24, 2019.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a two new
2 sections, designated §30-5-35 and §30-5-36, all relating to pharmacist dispensing of
3 drugs; permitting a pharmacist to dispense an amount equal to the prescription limit;
4 permitting a pharmacist to provide an equal amount of drugs based upon dosage; and
5 permitting a pharmacist to refill a prescription in an emergency.

Be it enacted by the Legislature of West Virginia:

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

§30-5-35. Conversion of prescriptions authorizing refills.

1 (a) If a prescription authorizes a drug to be dispensed by refilling the prescription one or
2 more times and the total quantity of the drug does not exceed a 90-day supply of the drug, a
3 pharmacist who is filling or refilling the prescription may dispense a quantity of the drug that varies
4 from the quantity or amount of the drug originally written on the prescription, if all of these
5 conditions are met:

6 (1) The action taken by the pharmacist does not result in a quantity or amount of the drug
7 being dispensed that exceeds the total quantity that may be dispensed by filling and refilling the
8 prescription.

9 (2) The prescription is for one of the following:

10 (A) A maintenance drug to be taken on a regular, recurring basis to treat a chronic
11 condition;

12 (B) A drug to be taken on a regular, recurring basis to prevent disease; or

13 (C) A contraceptive.

14 (3) If the prescription is for a maintenance drug, the patient has used an initial 30-day
15 supply of the drug, or a 90-day supply of the drug has previously been prescribed to the patient,

16 and the pharmacist determines, after consulting with the patient, that the drug has stabilized the
17 patient's condition.

18 (4) The prescription is not for a controlled substance, as set forth in §60A-1-1 et seq.;

19 (5) The prescriber did not state, "Brand Medically Necessary"; and

20 (6) The pharmacist consults with the patient, and the pharmacist determines the action
21 authorized by this section is appropriate for the patient.

22 (b) When a licensed practitioner authorizes a drug to be dispensed in a certain dosage,
23 and the pharmacist is unable to dispense the drug in the same dosage as specified, the
24 pharmacist may substitute the same drug in a different dosage, if the aggregate dosage of the
25 prescription remains the same and the following conditions are met:

26 (1) The pharmacist counsels the patient on the differences; and

27 (2) The pharmacist notifies the patient's prescriber of the drug product substitution within
28 five business days of the substitution.

29 (c) This section does not require a health care insurer, government health care program,
30 pharmacy benefit manager, or other entity that offers health benefit plans to provide coverage for
31 a drug in a manner that is inconsistent with the patient's benefit plan.

§30-5-36. Emergency prescriptions for life-sustaining medication.

32 (a) A pharmacist may distribute or sell a dangerous drug, other than a schedule II-
33 controlled substance as defined in §60A-2-206, without a written or oral prescription from a
34 licensed health professional authorized to prescribe drugs if all the following conditions are met:

35 (1) The pharmacy at which the pharmacist works has a record of a prescription for the
36 drug in the name of the patient who is requesting it, but the prescription does not provide for a
37 refill or the time permitted by the rules adopted by the state board of pharmacy for providing refills
38 has elapsed;

39 (2) The pharmacist is unable to obtain authorization to refill the prescription from a health
40 care professional who issued the prescription or another health professional responsible for the
41 patient's care;

42 (3) In the exercise of the pharmacist's professional judgment:

43 (A) The drug is essential to sustain the life of the patient or continue therapy for a chronic
44 condition of the patient.

45 (B) Failure to dispense or sell the drug to the patient could result in harm to the health of
46 the patient.

47 (4) Except as provided in this section, the amount of the drug that is dispensed or sold
48 under this section does not exceed a seventy-two-hour supply as provided in the prescription;
49 and

50 (5) If the drug sold or dispensed under this section is not a controlled substance and the
51 patient has been on a consistent drug therapy as demonstrated by records maintained by a
52 pharmacy, the amount of the drug dispensed or sold does not exceed a thirty-day supply as
53 provided in the prescription or, if the standard unit of dispensing for the drug exceeds a thirty-day
54 supply, the amount of the drug dispensed or sold does not exceed the standard unit of dispensing.
55 A pharmacist shall not dispense or sell a particular drug to the same patient in an amount
56 described in this section more than once in any twelve-month period.

57 (b) A Pharmacist who dispenses or sells a drug under this section shall:

58 (1) For one year after the date of dispensing or sale, maintain a record in accordance with
59 this chapter of the drug dispensed or sold, including the name and address of the patient and the
60 individual receiving the drug, if the individual receiving the drug is not the patient, the amount
61 dispensed or sold, and the original prescription number;

62 (2) Notify the health professional who issued the initial prescription or another health
63 professional responsible for the patient's care not later than seventy-two hours after the drug is
64 sold or dispensed; and within seven days after authorizing an emergency oral prescription, the

65 practitioner has a written prescription for the emergency quantity prescribed delivered to the
66 dispensing pharmacist. The prescription shall have written on its face "Authorization for
67 Emergency Dispensing" and the date of the orally or electronically transmitted prescription. The
68 written prescription may be delivered to the pharmacist in person or by mail, but if delivered by
69 mail, it must be postmarked within the seven-day period. Upon receipt, the dispensing pharmacist
70 shall attach this written prescription to the emergency oral prescription which had earlier been
71 reduced to writing or to the hard copy of the electronically transmitted prescription. The pharmacist
72 shall notify the nearest office of the U.S. Drug Enforcement Administration if the prescribing
73 practitioner fails to deliver a written prescription.

74 (3) If applicable, obtain authorization for additional dispensing from one of the health
75 professionals in division (A) (1) of this section.

76 (4) A pharmacist who dispenses or sells a drug under this section may do so once for
77 each prescription described here.