Committee Substitute

for

House Bill 2524

By Delegates Atkinson, Hill, D. Jeffries, Holren,
Fleischauer and Staggers

[Passed March 8, 2019; in effect ninety days from passage.]
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §30-5-35 and §30-5-36, all relating to pharmacist dispensing of drugs; permitting a pharmacist to dispense an amount equal to the prescription limit; permitting a pharmacist to provide an equal amount of drugs based upon dosage; and 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.

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

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

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

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

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

(C) A contraceptive.

(3) If the prescription is for a maintenance drug, the patient has used an initial 30-day supply of the drug, or a 90-day supply of the drug has previously been prescribed to the patient,
and the pharmacist determines, after consulting with the patient, that the drug has stabilized the
patient’s condition.

(4) The prescription is not for a controlled substance, as set forth in §60A-1-1 et seq.; and
(5) The pharmacist consults with the patient, and the pharmacist determines the action
authorized by this section is appropriate for the patient.

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

(1) The pharmacist counsels the patient on the differences; and
(2) The pharmacist notifies the patient’s prescriber of the drug product substitution within
five business days of the substitution.

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

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

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

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

(2) The pharmacist is unable to obtain authorization to refill the prescription from a health
care professional who issued the prescription or another health professional responsible for the
patient’s care;
In the exercise of the pharmacist's professional judgment:

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

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

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

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

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

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

(2) Notify the health professional who issued the initial prescription or another health professional responsible for the patient's care not later than seventy-two hours after the drug is sold or dispensed; and within seven days after authorizing an emergency oral prescription, the practitioner has a written prescription for the emergency quantity prescribed delivered to the dispensing pharmacist. The prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the orally or electronically transmitted prescription. The
written prescription may be delivered to the pharmacist in person or by mail, but if delivered by
mail, it must be postmarked within the seven-day period. Upon receipt, the dispensing pharmacist
shall attach this written prescription to the emergency oral prescription which had earlier been
reduced to writing or to the hard copy of the electronically transmitted prescription. The pharmacist
shall notify the nearest office of the U.S. Drug Enforcement Administration if the prescribing
practitioner fails to deliver a written prescription.

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

(4) A pharmacist who dispenses or sells a drug under this section may do so once for
each prescription described here.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within be approved this the 26th day of March, 2019.

Governor