Committee Substitute for House Bill 2754

By Delegates Summers, Tully, Forsht, Heckert, Petitto, Jeffries and Espinosa

[Passed March 7, 2023; in effect from passage.]
AN ACT to amend and reenact §30-5-7 and §30-5-12 of the Code of West Virginia, 1931, as amended, relating to immunizations performed in a pharmacy; permitting a pharmacy technician to perform an immunization; updating rulemaking authority; and reducing the age of a recipient.

Be it enacted by the Legislature of West Virginia:

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

§30-5-7. Rule-making authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, to implement the provisions of this article and §60A-2-201 et seq., §60A-3-301 et seq., §60A-8-1 et seq., §60A-9-1 et seq., and §60A-10-1 et seq. of this code, including:

(1) Standards and requirements for a license, permit, and registration;
(2) Educational and experience requirements;
(3) Procedures for examinations and reexaminations;
(4) Requirements for third parties to prepare, administer or prepare, and administer examinations and reexaminations;
(5) The passing grade on the examination;
(6) Procedures for the issuance and renewal of a license, permit, and registration;
(7) A fee schedule;
(8) Continuing education requirements;
(9) Set standards for professional conduct;
(10) Establish equipment and facility standards for pharmacies;
(11) Approve courses and standards for training pharmacist technicians;
(12) Regulation of charitable clinic pharmacies;
(13) Regulation of mail-order pharmacies: Provided, That until the board establishes requirements that provide further conditions for pharmacists who consult with or who provide pharmacist care to patients regarding prescriptions dispensed in this state by a mail-order pharmacy, the pharmacist in charge of the out-of-state mail-order pharmacy shall be licensed in West Virginia and any other pharmacist providing pharmacist care from the mail-order pharmacy shall be licensed in the state where the pharmacy is located;

(14) Agreements with organizations to form pharmacist recovery networks;

(15) Create an alcohol or chemical dependency treatment program;

(16) Establish a ratio of pharmacy technicians to on-duty pharmacist operating in any outpatient, mail order, or institutional pharmacy;

(17) Regulation of telepharmacy;

(18) The minimum standards for a charitable clinic pharmacy and rules regarding the applicable definition of a pharmacist-in-charge, who may be a volunteer, at charitable clinic pharmacies: Provided, That a charitable clinic pharmacy may not be charged any applicable licensing fees and such clinics may receive donated drugs;

(19) Establish standards for substituted drug products;

(20) Establish the regulations for E-prescribing;

(21) Establish the proper use of the automated data processing system;

(22) Registration and control of the manufacture and distribution of controlled substances within this state;

(23) Regulation of pharmacies;

(24) Sanitation and equipment requirements for wholesalers, distributors, and pharmacies;

(25) Procedures for denying, suspending, revoking, reinstating, or limiting the practice of a licensee, permittee, or registrant;

(26) Regulations on prescription paper as provided in §16-5-27 of this code;
(27) Regulations on controlled substances as provided in §60A-2-201 et seq. of this code;

(28) Regulations on manufacturing, distributing, or dispensing any controlled substance as provided in §60A-3-301 of this code;

(29) Regulations on wholesale drug distribution as provided in §60A-8-1 et seq. of this code;

(30) Regulations on controlled substances monitoring as provided in §60A-9-1 et seq. of this code;

(31) Regulations on Methamphetamine Laboratory Eradication Act as provided in §60A-10-1 et seq. of this code;

(32) Establish and maintain an official prescription paper program; and

(33) Any other rules necessary to effectuate the provisions of this article.

(b) The board may provide an exemption to the pharmacist-in-charge requirement for the opening of a new retail pharmacy or during a declared emergency.

(c) The board, the Board of Medicine, and the Board of Osteopathic Medicine shall jointly agree and propose rules concerning collaborative pharmacy practice for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.

(d) The board, with the advice of the Board of Medicine and the Board of Osteopathic Medicine, shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to perform influenza and pneumonia immunizations on a person of 18 years of age or older. These rules shall provide, at a minimum, for the following:

(1) Establishment of a course, or provide a list of approved courses, in immunization administration. The courses shall be based on the standards established for such courses by the Centers for Disease Control and Prevention in the public health service of the United States Department of Health and Human Services;

(2) Definitive treatment guidelines which shall include, but not be limited to, appropriate observation for an adverse reaction of an individual following an immunization;
(3) Prior to administration of immunizations, a pharmacist shall have completed a board-approved immunization administration course and completed an American Red Cross or American Heart Association basic life-support training, and maintain certification in the same;

(4) Continuing education requirements for this area of practice;

(5) Reporting requirements for pharmacists administering immunizations to report to the primary care physician or other licensed health care provider as identified by the person receiving the immunization;

(6) Reporting requirements for pharmacists administering immunizations to report to the West Virginia Statewide Immunization Information;

(7) That a pharmacist may not delegate the authority to administer immunizations to any other person, unless administered by a licensed pharmacy intern or registered pharmacy technician under the direct supervision of a pharmacist of whom the pharmacist, the pharmacist technician and intern have successfully completed all board-required training; and

(8) Any other provisions necessary to implement the provisions of this section.

(e) The Board of Medicine and the Board of Osteopathic Medicine shall propose joint rules, by July 1, 2023, for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to permit a licensed pharmacist, pharmacy technician or pharmacy intern to administer immunizations in accordance with definitive treatment guidelines for immunizations promulgated by the latest notice from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), including, but not limited to, the CDC’s recommended immunization schedule for adults, children, and adolescents. In addition, the joint rules shall permit a licensed pharmacist, pharmacy technician or pharmacy intern to administer immunizations in accordance with definitive treatment guidelines for immunizations promulgated by the latest notice from the CDC, including, but not limited to, the CDC’s recommended immunization schedule for adults, children, and adolescents to a person age 3 through 17, with written informed parental consent and there are no contraindications to that patient receiving that
vaccine. These rules shall provide, at a minimum, the same provisions contained in subsections (d)(1) through (d)(8), inclusive, of this section.

(f) All of the board’s rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.

§30-5-12. Scope practice for registered pharmacy technician.

(a) A registered pharmacy technician shall, under the direct supervision of the licensed pharmacist, perform at a minimum the following:

(1) Assist in the dispensing process;

(2) Receive new written or electronic prescription drug orders;

(3) Compound;

(4) Stock medications;

(5) Complete a list of a patient’s current prescription and nonprescription medications to provide for medication reconciliation;

(6) Supervise registered pharmacy technicians and pharmacy technician trainees;

(7) Medical records screening;

(8) Administer immunizations, as provided by legislative rule; and

(9) Perform pharmacy technician product verification, where no clinical judgment is necessary and the pharmacist makes the final verification; if the registered pharmacy technician furnishes to the Board an affidavit signed and dated by the supervising pharmacist-in-charge of the facility which will employee the applicant attesting to the applicant’s competency in the advanced areas of practice that he or she will practice; and has either:

(A) Worked as a full-time registered pharmacy technician holding a pharmacy technician endorsement in West Virginia for at least the previous two years; or

(B) Worked as a full-time registered pharmacy technician holding a pharmacy technician license in good standing in another jurisdiction for at least the previous two years.
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(b) A registered pharmacy technician may perform the following under indirect supervision of a licensed pharmacist:

1. Process medical coverage claims; and
2. Cashier.

(c) A registered pharmacy technician may not perform the following:

1. Drug regimen review;
2. Clinical conflict resolution;
3. Contact a prescriber concerning prescription drug order clarification or therapy modification;
4. Patient counseling;
5. Dispense process validation;
6. Prescription transfer;
7. Receive new oral prescription drug orders;
8. An act within the practice of pharmacist care that involves discretion or independent professional judgment; or
9. A function which the registrant has not been trained and the function has not been specified in a written protocol with competency established.

(d) Indirect supervision of a registered pharmacy technician is permitted to allow a pharmacist to take one break of no more than 30 minutes during any contiguous eight-hour period. The pharmacist may leave the pharmacy area but may not leave the building during the break. When a pharmacist is on break, a pharmacy technician may continue to prepare prescriptions for the pharmacist(s verification. A prescription may not be delivered until the pharmacist has verified the accuracy of the prescription, and counseling, if required, has been provided to or refused by the patient.

(e) A pharmacy that permits indirect supervision of a pharmacy technician during a pharmacist(s break shall have either an interactive voice response system or a voice mail system
installed on the pharmacy phone line in order to receive new prescription orders and refill authorizations during the break.

(f) The pharmacy shall establish protocols that require a registered pharmacy technician to interrupt the pharmacist’s break if an emergency arises.

(g) A registered pharmacy technician who has obtained a nuclear pharmacy technician endorsement, may under the direct supervision of the licensed nuclear pharmacist, perform the following:

1. Assist in the dispensing process;
2. Receive new written or electronic prescription drug orders;
3. Mix compound ingredients for liquid products, suspensions, ointments, mixes, or blend for tablet granulations and capsule powders;
4. Prepare radiopharmaceuticals;
5. Record keeping;
6. File and organize prescriptions;
7. Create reports;
8. Inventory tasks;
9. Handle raw materials and intermediate or finished products;
10. Perform general maintenance as required on pumps, homogenizers, filter presses, tablet compression machines, and other like machines;
11. Perform standard operating procedures to meet current good manufacturing practices (GMP);
12. Maintain records;
13. Monitor and verify quality in accordance with statistical process or other control procedures; and
(h) A registered pharmacy technician who has obtained a nuclear pharmacy technician endorsement may not perform the following:

1. Drug regimen review;
2. Clinical conflict resolution;
3. Contact a prescriber concerning prescription drug order clarification or therapy modification;
4. Receive new oral prescription drug orders.
The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

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Speaker of the House of Delegates

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President of the Senate

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Governor