

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
93rd General Assembly  
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As Engrossed: H2/24/21 H3/4/21

# A Bill

HOUSE BILL 1246

By: Representatives L. Johnson, Bragg, Eubanks

By: Senators D. Wallace, Hester

## For An Act To Be Entitled

AN ACT TO ALLOW PHARMACISTS TO TREAT CERTAIN HEALTH  
CONDITIONS; TO MODIFY PHYSICIAN DISPENSING; TO ALLOW  
DELEGATION OF PHYSICIAN DISPENSING; AND FOR OTHER  
PURPOSES.

### Subtitle

TO ALLOW PHARMACISTS TO TREAT CERTAIN  
HEALTH CONDITIONS; TO MODIFY PHYSICIAN  
DISPENSING; AND TO ALLOW DELEGATION OF  
PHYSICIAN DISPENSING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Purpose.

It is the purpose of this act to authorize pharmacists in Arkansas to test and screen for health conditions that the Centers for Medicare and Medicaid Services has determined qualify for a waiver under the federal Clinical Laboratory Improvement Amendments of 1988, the federal regulations adopted, or any established screening procedures that can safely be performed by a pharmacist.

SECTION 2. Arkansas Code § 17-92-101(17)(A)(x), concerning the definition of "practice of pharmacy", is amended to read as follows:

(x)(a) Providing pharmacy care; ~~and.~~

(b) A pharmacist may treat the following conditions within the framework of a statewide written protocol:



(1) Influenza;  
(2) Pharyngitis caused by streptococcus  
A; or  
(3) Other health conditions that can be screened utilizing the waived test under the Clinical Laboratory Improvement Amendments of 1988, that may be adopted by rule of the Arkansas State Board of Pharmacy, in consultation with and upon approval of the Arkansas State Medical Board.

(c) A pharmacist shall only treat conditions for which the pharmacist has tested and that are approved under this subdivision (17)(A)(x)(c).

(d)(1) The Arkansas State Board of Pharmacy, with consultation and upon approval of the Arkansas State Medical Board, shall adopt by rule:

(A) A formulary of medicinal drugs that a pharmacist may prescribe for treatment of conditions listed in subdivision (17)(A)(x)(b) of this section; and

(B) A written statewide protocol for conditions listed in subdivision (17)(A)(x)(b) of this section, which shall including without limitation age of people that can be treated and medications to be used to treat people under this subdivision.

(2) The formulary shall include medicinal drugs approved by the United States Food and Drug Administration which are indicated for treatment of these conditions, including without limitation any over-the-counter medication.

(3) The formulary shall not include any controlled substance in Schedule I-IV or 21 U.S.C. § 812, as existing on January 1, 2021.

(e) A pharmacist may write a prescription for over-the-counter medications, supplies, and devices; and

SECTION 3. Arkansas Code § 17-92-101(18), concerning the definition of "prescription", is amended to read as follows:

(18)(A)(i) "Prescription" means an order for medicine or medicines usually written as a formula by a physician, optometrist, dentist, veterinarian, or other licensed medicinal practitioner.

(ii) A prescription ~~It~~ contains the names and quantities of the desired substance, with instructions to the pharmacist for its preparation and to the patient for the use of the medicine at a particular time and may authorize the pharmacist to substitute a therapeutically equivalent drug that is at ~~a~~ an equal or lower cost to the patient and communicate that authorization by any generally accepted means of communication of a prescription from a prescriber to a pharmacist.

(B)(i) A ~~substitution of a therapeutically equivalent drug shall occur only after the prescriber grants such authorization for each prescription.~~ pharmacist whose practice is located within this state may substitute one (1) medication for a therapeutically equivalent medication.

(ii) However, a pharmacist shall not substitute one (1) medication for a therapeutically equivalent medication if:

(a) A prescription is in writing and the prescriber indicates in his or her own handwriting by name or initial that no substitution is to be made;

(b) A prescription is not in writing and the prescriber expressly indicates that the prescription is to be dispensed as communicated; or

(c) The Arkansas State Board of Pharmacy has determined that a therapeutically equivalent medication should not be substituted and has notified all pharmacists of that determination.

(C)(i) Before dispensing, the pharmacist shall discuss verbally any suggested substitution with the patient and inform the patient that the patient has a right to refuse the substitution.

(ii) The discussion under subdivision (18)(C)(i) of this section shall include without limitation:

(a) Notification to the patient that the therapeutically equivalent drug does not contain the identical active ingredient present in the prescribed drug; and

(b) All differences in dosage and frequency between the prescribed drug and the therapeutically equivalent drug.

(D) The pharmacist shall send notice of the substitution to the prescriber in writing or by electronic communication within twenty-four (24) hours after the drug is dispensed to the patient.

(E) Subdivision (18)(B) of this section does not apply to

*specific acts of drug therapy management or disease state management delegated to a pharmacist based upon a written protocol or patient care plan approved by a physician under subdivision (17)(A)(ix) of this section;*

SECTION 4. Arkansas Code Title 17, Chapter 92, Subchapter 1, is amended to add an additional section to read as follows:

17-92-118. Point-of-care treatment.

A pharmacist who tests for conditions under § 17-92-101(17)(A)(x)

shall:

- (1) Hold a license to practice pharmacy in this state;
- (2) Report a diagnosis or suspected existence of influenza to the Department of Health;
- (3) Furnish patient records to a healthcare practitioner designated by the patient upon the request of the patient; and
- (4) Maintain records of all patients receiving services under this section for two (2) years.

SECTION 5. Arkansas Code § 17-95-102 is amended to read as follows:

17-95-102. Legend drugs.

(a) ~~A dispensing physician is~~ As used in this section, a "dispensing physician" means a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., who purchases legend drugs to be dispensed to his or her patients for the patients' personal use and administration outside the physician's office.

(b) This section ~~shall~~ does not apply to physicians who only dispense drugs in injectable form unless they are controlled substances, in which case the section shall fully apply.

(c) The dispensing physician shall:

(1) Personally dispense legend drugs, and the dispensing of such drugs may ~~not~~ be delegated;

(2)(A) Keep records of all receipts and distributions of legend drugs.

(B) The records shall be subject to inspection by the proper enforcement authority and shall be readily accessible for inspection and maintained in a central registry; and

(3) Label legend drugs with the following information:

- (A) Patient's name and address;
- (B) Prescribing physician's address and narcotic registry number issued by the United States Drug Enforcement Administration or national provider identification number;
- (C) Date of dispensing; and
- (D) Directions and cautionary statements, if any, as required by law.

(d)(1) A physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., shall not dispense legend drugs without prior approval by the Arkansas State Medical Board after application to the ~~board~~ Arkansas State Medical Board and on the showing of need.

(2) Licensed physicians who were dispensing in the ordinary course of their practice before April 12, 2013, shall be exempt from the requirements of this subsection.

(3) The ~~board~~ Arkansas State Medical Board shall determine whether need exists for a physician to dispense a specific legend drug to the physician's patient for a patient's personal use and administration outside of the physician's office based on such information as is necessary for the ~~board~~ Arkansas State Medical Board to determine:

- (A) The legend drug or drugs that the physician requests to dispense;
- (B) The ability of a physician's patient to obtain the legend drug from other medical professionals;
- (C) The availability of the legend drug to be prescribed by the physician;
- (D) The hours at which the legend drug may be obtained from other medical professionals;
- (E) The distance the physician's patient must travel to obtain the legend drug from other medical professionals;
- (F) Whether the physician has been investigated by the ~~board~~ Arkansas State Medical Board concerning the improper prescribing or use of a legend drug;
- (G) Whether the physician has a financial relationship with the manufacturer of a legend drug that would create the appearance of a conflict of interest;

(H) Whether the physician dispensing a legend drug will foster cost containment through improved efficiency and productivity; and

(I) The procedures the physician has implemented to:

(i) Assure compliance with the requirements of subsection (c) of this section;

(ii) Monitor and guard against potential drug interactions;

(iii) Store and safeguard the legend drugs; and

(iv) Comply with the Prescription Drug Monitoring Program Act, § 20-7-601 et seq., concerning the reporting requirements to the Prescription Drug Monitoring Program.

(4) This section does not apply to a prescription for:

(i) A prescription for a topical medication;

(ii) Naloxone;

(iii) Nicotine nicotine replacement therapy products;

(iv) Contraceptives; contraceptives is exempt from subdivision (d)(3) of this section

(v) Acute care medication; or

(vi) Initial treatment for maintenance medication.

(e)(1) ~~The board~~ Arkansas State Medical Board shall enforce the provisions of this section and is authorized and directed to adopt rules to carry out ~~its purpose~~ the purpose of this section.

(2) The Arkansas State Medical Board shall adopt rules for physician dispensing that, at minimum, meet the same requirements for dispensing and oversight established by the Arkansas State Board of Pharmacy.

(f) As used in this section:

(1)(A) "Acute care medication" means a legend drug that is not a controlled substance and is prescribed for no more than fourteen (14) days of therapy.

(B) "Acute care medication" includes the following oral medications:

(i) Medications to treat infections;

(ii) Anti-inflammatory medications;

(iii) Antinausea medications;

(iv) Antihistamines; and

(v) Cough medications;

(2) "Initial treatment" means the first prescription written for a specific prescription medication intended to initiate therapy on the medication; and

(3) "Maintenance medication" means a legend drug that:

(A) Is not a controlled substance;

(B) Is prescribed for no more than thirty (30) days; and

(C) Is used to treat one (1) of the following medical conditions:

(i) Hypertension;

(ii) Diabetes mellitus; or

(iii) Hypercholesterolemia.

SECTION 6. DO NOT CODIFY. Effective date.

Sections 1 -4 take effect on and after January 1, 2022.

/s/Johnson