ADOPTED REGULATION

OF THE STATE BOARD OF PHARMACY

LCB File No. R014-14

Effective June 26, 2015

EXPLANATION – Matter in ***italics*** is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1 and 2, NRS 639.070.

A REGULATION relating to pharmacy; revising provisions governing the presentation of identification by a person who picks up a controlled substance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Pharmacy to adopt regulations governing the dispensing of poisons, drugs, chemicals and medicines. (NRS 639.070) Existing regulations require an employee of a pharmacy to request the person to whom a controlled substance will be dispensed pursuant to a lawful prescription to present certain identification before the employee dispenses the controlled substance. In certain circumstances, an employee is not required to request such a person to present identification. (NAC 639.748)

Section 1 of this regulation clarifies that, under certain circumstances, identification must be requested from a person who picks up a controlled substance and that the identification presented must be a valid form of identification. **Section 1** also revises the information relating to a person who picks up a controlled substance that an employee is required to record in certain circumstances. **Section 1** also revises the circumstances in which an employee is not required to request a person who picks up a controlled substance to present identification.

Section 1. NAC 639.748 is hereby amended to read as follows:

639.748 1. Except as otherwise provided in this section, an employee of a pharmacy who is authorized to dispense controlled substances shall, before dispensing a controlled substance pursuant to a lawful prescription, request the person [~~to whom~~] ***who picks up*** the controlled substance [~~will be dispensed~~] to present a current ***and valid*** form of identification issued by a

federal, state or local governmental agency that contains a photograph of the person. The employee shall not dispense the controlled substance if:

(a) That person does not present such identification; or

(b) The employee reasonably believes that the identification presented has been altered or is false or otherwise invalid.

2. The provisions of subsection 1 do not apply if:

(a) ~~[The prescription is paid for, in whole or in part, by an insurer;~~

~~(b)]~~ The prescription is for a patient who has had a prescription ~~[for the same controlled substance]~~ previously filled by the pharmacy; ~~[or~~

~~(c) The pharmacy is a part of the]~~

(b) The prescription is for a patient who is an inpatient at a health care facility ***, facility for long-term care or facility for hospice care*** where ~~[the patient]~~ ***he or she*** is being treated ~~[.]~~ ***;***

(c) The person who picks up the controlled substance is personally known to an employee of the pharmacy; or

(d) The employee is dispensing the controlled substance by mail and has obtained or verified the identification of the patient through the prescription benefit plan of the patient.

3. ~~[The]~~ ***If the provisions of subsection 1 apply, the*** employee ***dispensing the controlled substance*** shall:

(a) Make a ~~[photocopy]~~ ***copy*** of the identification presented to the employee; or

(b) Record the full name of the person ~~[to whom]~~ ***who picks up*** the controlled substance ***,*** ~~[is dispensed and]~~ the identification number ***, if any,*** indicated on his or her identification ~~[, if any,]~~ ***presented to the employee and the federal, state or local governmental agency that issued the identification. The employee shall record that information*** on ~~[the]~~ ***:***

(1) The prescription ~~[, the]~~ ***;***

(2) The refill log ~~[, the]~~ ***;***

(3) The counseling log ~~[, a]~~ ***;***

(4) A computer record related to the patient ***;*** or ~~[any other]~~

(5) A document that is readily retrievable ~~[.]~~ ***and accessible for inspection by law enforcement or any member, employee, agent or designee of the Board.***

4. If a ~~[photocopy]~~ ***copy*** of the identification is made pursuant to paragraph (a) of subsection 3, it must be filed with the copy of the prescription that is maintained by the pharmacy.

5. As used in this section:

(a) "Facility for hospice care" has the meaning ascribed to it in NRS 449.0033.

(b) "Facility for long-term care" means:

(1) A residential facility for groups as defined in NRS 449.017; and

(2) A facility for skilled nursing as defined in NRS 449.0039.

(c) "Health care facility" has the meaning ascribed to it in NRS 449.2414.

(d) "Valid form of identification" does not include:

(1) A driver authorization card obtained in accordance with NRS 483.291; or

(2) A driver authorization card, driving privilege card or other similar card issued by another jurisdiction.

Sec. 2. NAC 639.753 is hereby amended to read as follows:

639.753 1. A pharmacist may decline to fill a prescription that satisfies the requirements of this chapter and chapter 639 of NRS only if the pharmacist reasonably believes, in his or her professional judgment, that:

(a) The filling of the prescription would be unlawful;

(b) The filling of the prescription would be imminently harmful to the medical health of the patient;

(c) The prescription is fraudulent; or

(d) The prescription is not for a legitimate medical purpose.

2. If a pharmacist declines to fill a prescription pursuant to this section, the pharmacist shall speak with the prescribing practitioner in a timely manner to discuss and resolve the concerns of the pharmacist regarding the prescription. Before the pharmacist speaks with the prescribing practitioner, the pharmacist may, based on his or her professional judgment:

(a) Retain the prescription and not return the prescription to the patient;

(b) Return the prescription to the patient;

(c) Make a ~~[photocopy]~~ ***copy*** of the prescription and return the prescription to the patient; and

(d) Unless the prescription is for a controlled substance that is listed in schedule II, dispense a quantity of the drug prescribed, not to exceed a 3 days' supply, to allow a reasonable period for the pharmacist to speak with the prescribing practitioner about the concerns of the pharmacist regarding the prescription.

3. After speaking with the prescribing practitioner, the pharmacist may fill the prescription if the pharmacist reasonably believes, in his or her professional judgment, that the prescription is:

(a) Lawful;

(b) Not imminently harmful to the medical health of the patient;

(c) Not fraudulent; and

(d) For a legitimate medical purpose.

4. If, after speaking with the prescribing practitioner, the pharmacist reasonably believes, in his or her professional judgment, that the prescription does not meet one or more of the standards

set forth in subsection 3, the pharmacist shall retain the prescription and may not return the prescription to the patient.

R014-14
NAC 639.748
Identification requirements to obtain a controlled substance prescription from a pharmacy.

May 13, 2015

INFORMATIONAL STATEMENT

The informational statement required by NRS 233B.066 numerically conforms to the subsections of the statute as follows:

1. EXPLANATION OF THE NEED FOR THE ADOPTED REGULATION

The proposed amendment to NAC 639.748 will clarify the already existing requirement to view and obtain a copy of an identification of each person who picks up a controlled substance at a pharmacy.

2. A DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED, A SUMMARY OF PUBLIC RESPONSE, AND AN EXPLANATION HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

The Board solicited comment on the proposed amendment by (1) posting notice, with links to the full text of the proposed amendment, to the LCB Administrative Regulation Notices webpage, (2) posting a copy of the full text of the proposed changes to the Board's website as part of the Board Meeting materials, (3) posting notice to the Nevada Public Notice website, operated by the Department of Administration, with a link back to a full text of the proposed amendment on the Board's website, and (4) posting notices and agendas in numerous public locations per NRS Chapter 233B.

The Board also solicited comment from Nevada dispensers, and from representatives of relevant industry associations that Board Staff deemed likely to have an interest in the proposed amendment. The Board also provided time for public comment at the workshop(s) concerning the proposed amendment.

Parties interested in obtaining a copy of the summary of the proposed amendment, or that wish to view the text of the proposed amendment, may access that information on the Board's website at bop.nv.gov, or by contacting the Board's office at (775) 850-1440.

3. THE NUMBER OF PERSONS WHO: (A) ATTENDED EACH HEARING; (B) TESTIFIED AT EACH HEARING; AND (C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

The number of persons who attended the hearing was 29.
The number of persons who testified at the hearing was 1.
The number of agency submitted statements was 1.

The name of persons who testified and/or submitted written testimony at the hearing:

Liz Macmenamin, Retail Association of Nevada; 410 S. Minnesota Street, Carson City, Nevada 89703-4272; 775-882-1700; lizm@rannv.org

Mary Staples, National Association of Chain Drug Stores; 1560 East Southlake Boulevard, Suite 230, Southlake, Texas 76092; 817-442-1155; mstaples@nacds.org.

4. A DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

The Board solicited comment on the proposed amendment by (1) posting notice, with links to the full text of the proposed amendment, to the LCB Administrative Regulation Notices webpage, (2) posting a copy of the full text of the proposed changes to the Board's website as part of the Board Meeting materials, (3) posting notice to the Nevada Public Notice website, operated by the Department of Administration, with a link back to a full text of the proposed amendment on the Board's website, and (4) posting notices and agendas in numerous public locations per NRS Chapter 233B.

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5. IF THE REGULATION WAS ADOPTED WITHOUT CHANGING ANY PART OF THE PROPOSED REGULATION, A SUMMARY OF THE REASONS FOR ADOPTING THE REGULATION WITHOUT CHANGE.

The proposed regulation has been to Workshop three times and the proposed language was amended to address public feedback.

6. THE ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC. THESE MUST BE STATED SEPARATELY, AND IN EACH CASE MUST INCLUDE:

A) BOTH ADVERSE AND BENEFICIAL EFFECTS.

This regulation should have no economic impact on affected businesses or on the public. Pharmacies were already required to view and copy I.D.'s for most controlled substance

prescriptions. These amendments clarify a few exceptions where patient identities are already known or otherwise established.

B) BOTH IMMEDIATE AND LONG-TERM EFFECTS.

This regulation will have no immediate or long-term economic effects on business or the public.

7. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION.

There will be no additional or special costs incurred by the board for enforcement of this regulation.

8. A DESCRIPTION OF ANY REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES WHICH THE PROPOSED REGULATION OVERLAPS OR DUPLICATES AND A STATEMENT EXPLAINING WHY THE DUPLICATION OR OVERLAPPING IS NECESSARY. IF THE REGULATION OVERLAPS OR DUPLICATES A FEDERAL REGULATION, THE NAME OF THE REGULATING FEDERAL AGENCY.

The Board of Pharmacy is not aware of any similar regulations of other state or government agencies that the proposed regulation overlaps or duplicates.

9. IF THE REGULATION INCLUDES PROVISIONS WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISIONS.

The Board of Pharmacy is not aware of any similar regulations of the same activity in which the federal regulation is more stringent.

10. IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL ANNUAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.

This regulation does not provide a new or increase of fees.