

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 979**

Introduced by Kuehn, 38.

Read first time January 14, 2016

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to drug product selection; to amend section  
2 38-2891, Reissue Revised Statutes of Nebraska, section 71-2445,  
3 Revised Statutes Cumulative Supplement, 2014, and sections 38-2801,  
4 38-2837, 38-28,108, 38-28,109, 38-28,110, 38-28,111, 38-28,112,  
5 38-28,113, 38-28,114, 38-28,115, and 38-28,116, Revised Statutes  
6 Supplement, 2015; to provide for selection of interchangeable  
7 biological products by pharmacists as prescribed; to define and  
8 redefine terms; to rename the Nebraska Drug Product Selection Act;  
9 to harmonize provisions; and to repeal the original sections.  
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-2801, Revised Statutes Supplement, 2015, is  
2 amended to read:

3 38-2801 Sections 38-2801 to 38-28,107 and the Nebraska Drug or  
4 Biological Product Selection Act shall be known and may be cited as the  
5 Pharmacy Practice Act.

6 Sec. 2. Section 38-2837, Revised Statutes Supplement, 2015, is  
7 amended to read:

8 38-2837 (1) Practice of pharmacy means (a) the interpretation,  
9 evaluation, and implementation of a medical order, (b) the dispensing of  
10 drugs and devices, (c) drug or biological product selection, (d) the  
11 administration of drugs or devices, (e) drug utilization review, (f)  
12 patient counseling, (g) the provision of pharmaceutical care, (h)  
13 medication therapy management, and (i) the responsibility for compounding  
14 and labeling of dispensed or repackaged drugs and devices, proper and  
15 safe storage of drugs and devices, and maintenance of proper records.

16 (2) The active practice of pharmacy means the performance of the  
17 functions set out in this section by a pharmacist as his or her principal  
18 or ordinary occupation.

19 Sec. 3. Section 38-2891, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 38-2891 (1) A pharmacy technician shall only perform tasks which do  
22 not require professional judgment and which are subject to verification  
23 to assist a pharmacist in the practice of pharmacy.

24 (2) The functions and tasks which shall not be performed by pharmacy  
25 technicians include, but are not limited to:

26 (a) Receiving oral medical orders from a practitioner or his or her  
27 agent;

28 (b) Providing patient counseling;

29 (c) Performing any evaluation or necessary clarification of a  
30 medical order or performing any functions other than strictly clerical  
31 functions involving a medical order;

1 (d) Supervising or verifying the tasks and functions of pharmacy  
2 technicians;

3 (e) Interpreting or evaluating the data contained in a patient's  
4 record maintained pursuant to section 38-2869;

5 (f) Releasing any confidential information maintained by the  
6 pharmacy;

7 (g) Performing any professional consultations; and

8 (h) Drug or biological product selection, with regard to an  
9 individual medical order, in accordance with the Nebraska Drug or  
10 Biological Product Selection Act.

11 (3) The director shall, with the recommendation of the board, waive  
12 any of the limitations in subsection (2) of this section for purposes of  
13 a scientific study of the role of pharmacy technicians approved by the  
14 board. Such study shall be based upon providing improved patient care or  
15 enhanced pharmaceutical care. Any such waiver shall state the length of  
16 the study and shall require that all study data and results be made  
17 available to the board upon the completion of the study. Nothing in this  
18 subsection requires the board to approve any study proposed under this  
19 subsection.

20 Sec. 4. Section 38-28,108, Revised Statutes Supplement, 2015, is  
21 amended to read:

22 38-28,108 Sections 38-28,108 to 38-28,116 shall be known and may be  
23 cited as the Nebraska Drug or Biological Product Selection Act.

24 Sec. 5. Section 38-28,109, Revised Statutes Supplement, 2015, is  
25 amended to read:

26 38-28,109 The purposes of the Nebraska Drug or Biological Product  
27 Selection Act are to provide for the drug or biological product selection  
28 of equivalent drug products or interchangeable biological products and to  
29 promote the greatest possible use of such products.

30 Sec. 6. Section 38-28,110, Revised Statutes Supplement, 2015, is  
31 amended to read:

1           38-28,110 For purposes of the Nebraska Drug or Biological Product  
2 Selection Act, unless the context otherwise requires:

3           (1) Bioequivalent means drug products: (a) That are legally marketed  
4 under regulations promulgated by the federal Food and Drug  
5 Administration; (b) that are the same dosage form of the identical active  
6 ingredients in the identical amounts as the drug product prescribed; (c)  
7 that comply with compendial standards and are consistent from lot to lot  
8 with respect to (i) purity of ingredients, (ii) weight variation, (iii)  
9 uniformity of content, and (iv) stability; and (d) for which the federal  
10 Food and Drug Administration has established bioequivalent standards or  
11 has determined that no bioequivalence problems exist;

12           (2) Biological product means a virus, a therapeutic serum, a toxin,  
13 an antitoxin, a vaccine, blood, a blood component or derivative, an  
14 allergenic product, a protein except any chemically synthesized  
15 polypeptide, or an analogous product, arsphenamine or derivative of  
16 arsphenamine, or any other trivalent organic arsenic compound which is  
17 applicable to the prevention, treatment, or cure of a disease or  
18 condition of human beings;

19           (3 2) Brand name means the proprietary or trade name selected by the  
20 manufacturer, distributor, or packager for a drug or biological product  
21 and placed upon the labeling of such product at the time of packaging;

22           (4 3) Chemically equivalent means drug products that contain amounts  
23 of the identical therapeutically active ingredients in the identical  
24 strength, quantity, and dosage form and that meet present compendial  
25 standards;

26           (5 4) Drug product means any drug or device as defined in section  
27 38-2841;

28           (6 5) Drug or biological product select means to dispense, without  
29 the practitioner's express authorization, an equivalent drug product or  
30 an interchangeable biological product in place of the brand-name drug or  
31 biological product contained in a medical order of such practitioner;

1 (7 6) Equivalent means drug or biological products that are both  
2 chemically equivalent and bioequivalent; ~~and~~

3 (8 7) Generic name means the official title of a drug or drug  
4 combination as determined by the United States Adopted Names Council and  
5 accepted by the federal Food and Drug Administration of those drug  
6 products having the same active chemical ingredients in the same strength  
7 and quantity; ~~and~~ -

8 (9) Interchangeable biological product means:

9 (a) A biological product licensed by the federal Food and Drug  
10 Administration and determined to be interchangeable to the prescribed  
11 biological product pursuant to 42 U.S.C. 262(k)(4); or

12 (b) A biological product determined by the federal Food and Drug  
13 Administration to be therapeutically equivalent to the prescribed product  
14 as set forth in the Approved Drug Products with Therapeutic Equivalence  
15 Evaluations published by the federal Food and Drug Administration.

16 Sec. 7. Section 38-28,111, Revised Statutes Supplement, 2015, is  
17 amended to read:

18 38-28,111 (1) A pharmacist may drug or biological product select  
19 except when:

20 (a) A practitioner designates that drug or biological product  
21 selection is not permitted by specifying in the written, oral, or  
22 electronic prescription that there shall be no drug or biological product  
23 selection. For written or electronic prescriptions, the practitioner  
24 shall specify "no drug or biological product selection", "dispense as  
25 written", "brand medically necessary", or "no generic substitution" or  
26 the notation "N.D.B.P.S. N.D.P.S.", "D.A.W.", or "B.M.N." or words or  
27 notations of similar import to indicate that drug or biological product  
28 selection is not permitted. The pharmacist shall note "N.D.B.P.S.  
29 N.D.P.S.", "D.A.W.", "B.M.N.", "no drug or biological product selection",  
30 "dispense as written", "brand medically necessary", "no generic  
31 substitution", or words or notations of similar import on the

1 prescription to indicate that drug or biological product selection is not  
2 permitted if such is communicated orally by the prescribing practitioner;  
3 or

4 (b) A patient or designated representative or caregiver of such  
5 patient instructs otherwise.

6 (2) A pharmacist shall not drug or biological product select a ~~drug~~  
7 ~~product~~ unless:

8 (a) The drug or biological product, if it is in solid dosage form,  
9 has been marked with an identification code or monogram directly on the  
10 dosage unit;

11 (b) The drug or biological product has been labeled with an  
12 expiration date;

13 (c) The manufacturer, distributor, or packager of the drug or  
14 biological product provides reasonable services, as determined by the  
15 board, to accept the return of drug or biological products that have  
16 reached their expiration date; ~~and~~

17 (d) The manufacturer, distributor, or packager maintains procedures  
18 for the recall of unsafe or defective drug or biological products; ~~and~~ -

19 (e) The pharmacy informs the patient of the drug or biological  
20 product selection.

21 (3) Within five business days after the dispensing of a biological  
22 product, the dispensing pharmacist or his or her designee shall make an  
23 entry of the specific product which was provided to the patient,  
24 including the name of the product and the manufacturer. The communication  
25 shall be conveyed by making an entry that is electronically accessible to  
26 the prescriber through an interoperable electronic medical records  
27 system, electronic prescribing technology, a pharmacy benefit management  
28 system, or a pharmacy record. Entry into an electronic records system is  
29 presumed to provide notice to the prescriber. Otherwise, the pharmacist  
30 shall communicate the biological product dispensed to the prescriber  
31 using facsimile, telephone, electronic transmission, or other prevailing

1 means. The communication shall not be required if (a) there is no  
2 interchangeable biological product for the biological product prescribed  
3 or (b) the biological product dispensed is based on a refilled  
4 prescription and the biological product is not changed from the prior  
5 filling of the prescription.

6 Sec. 8. Section 38-28,112, Revised Statutes Supplement, 2015, is  
7 amended to read:

8 38-28,112 (1) Whenever a drug or biological product has been  
9 prescribed with the notation that no drug or biological product selection  
10 is permitted for a patient who has a contract whereunder he or she is  
11 reimbursed for the cost of health care, directly or indirectly, the party  
12 that has contracted to reimburse the patient, directly or indirectly,  
13 shall make reimbursements on the basis of the price of the brand-name  
14 drug or biological product and not on the basis of the equivalent drug  
15 product or interchangeable biological product, unless the contract  
16 specifically requires generic reimbursement under the Code of Federal  
17 Regulations.

18 (2) A prescription drug or device or biological product when  
19 dispensed shall bear upon the label the name of the drug or device or  
20 biological product in the container unless the practitioner writes do not  
21 label or words of similar import in the prescription or so designates  
22 orally.

23 (3) Nothing in this section shall (a) require a pharmacy to charge  
24 less than its established minimum price for the filling of any  
25 prescription or (b) prohibit any hospital from developing, using, and  
26 enforcing a formulary.

27 Sec. 9. Section 38-28,113, Revised Statutes Supplement, 2015, is  
28 amended to read:

29 38-28,113 (1) The drug or biological product selection ~~of any drug~~  
30 ~~product~~ by a pharmacist pursuant to the Nebraska Drug or Biological  
31 Product Selection Act shall not constitute the practice of medicine.

1           (2) Drug or biological product selection ~~of drug products~~ by a  
2 pharmacist pursuant to the act or any rules and regulations adopted and  
3 promulgated under the act shall not constitute evidence of negligence if  
4 the drug or biological product selection was made within the reasonable  
5 and prudent practice of pharmacy.

6           (3) When drug or biological product selection by a pharmacist is  
7 permissible under the act, such drug or biological product selection  
8 shall not constitute evidence of negligence on the part of the  
9 prescribing practitioner. The failure of a prescribing practitioner to  
10 provide that there shall be no drug or biological product selection in  
11 any case shall not constitute evidence of negligence or malpractice on  
12 the part of such prescribing practitioner.

13           Sec. 10. Section 38-28,114, Revised Statutes Supplement, 2015, is  
14 amended to read:

15           38-28,114 (1) The manufacturer, packager, or distributor of any  
16 legend drug sold, delivered, or offered for sale for human use in the  
17 State of Nebraska shall have the name and address of the manufacturer of  
18 the finished dosage form of the drug printed on the label on the  
19 container of such drug.

20           (2) Whenever a duly authorized agent of the department has probable  
21 cause to believe that any drug is without such labeling, the agent shall  
22 embargo such drug and shall affix an appropriate marking thereto. Such  
23 marking shall contain (a) adequate notice that the drug (i) is or is  
24 suspected of being sold, delivered, or offered for sale in violation of  
25 the Nebraska Drug or Biological Product Selection Act and (ii) has been  
26 embargoed and (b) a warning that it is unlawful for any person to remove  
27 or dispose of the embargoed drug by sale or otherwise without the  
28 permission of the agent or a court of competent jurisdiction.

29           Sec. 11. Section 38-28,115, Revised Statutes Supplement, 2015, is  
30 amended to read:

31           38-28,115 (1) In addition to any other penalties provided by law,

1 any person who violates any provision of the Nebraska Drug or Biological  
2 Product Selection Act or any rule or regulation adopted and promulgated  
3 under the act is guilty of a Class IV misdemeanor for each violation.

4 (2) It is unlawful for any employer or such employer's agent to  
5 coerce a pharmacist to dispense a drug or biological product against the  
6 professional judgment of the pharmacist or as ordered by a prescribing  
7 practitioner.

8 Sec. 12. Section 38-28,116, Revised Statutes Supplement, 2015, is  
9 amended to read:

10 38-28,116 (1) The department may adopt and promulgate rules and  
11 regulations necessary to implement the Nebraska Drug or Biological  
12 Product Selection Act upon the joint recommendation of the Board of  
13 Medicine and Surgery and the Board of Pharmacy.

14 (2) The department shall provide and maintain a list of all  
15 biological products that the federal Food and Drug Administration has  
16 determined to be interchangeable biological products.

17 Sec. 13. Section 71-2445, Revised Statutes Cumulative Supplement,  
18 2014, is amended to read:

19 71-2445 For purposes of the Automated Medication Systems Act:

20 (1) Automated medication distribution machine means a type of  
21 automated medication system that stores medication to be administered to  
22 a patient by a person credentialed under the Uniform Credentialing Act;

23 (2) Automated medication system means a mechanical system that  
24 performs operations or activities, other than compounding,  
25 administration, or other technologies, relative to storage and packaging  
26 for dispensing or distribution of medications and that collects,  
27 controls, and maintains all transaction information and includes, but is  
28 not limited to, a prescription medication distribution machine or an  
29 automated medication distribution machine. An automated medication system  
30 may only be used in conjunction with the provision of pharmacist care;

31 (3) Chart order means an order for a drug or device issued by a

1 practitioner for a patient who is in the hospital where the chart is  
2 stored, for a patient receiving detoxification treatment or maintenance  
3 treatment pursuant to section 28-412, or for a resident in a long-term  
4 care facility in which a long-term care automated pharmacy is located  
5 from which drugs will be dispensed. Chart order does not include a  
6 prescription;

7 (4) Hospital has the definition found in section 71-419;

8 (5) Long-term care automated pharmacy means a designated area in a  
9 long-term care facility where an automated medication system is located,  
10 that stores medications for dispensing pursuant to a medical order to  
11 residents in such long-term care facility, that is installed and operated  
12 by a pharmacy licensed under the Health Care Facility Licensure Act, and  
13 that is licensed under section 71-2451;

14 (6) Long-term care facility means an intermediate care facility, an  
15 intermediate care facility for persons with developmental disabilities, a  
16 long-term care hospital, a mental health center, a nursing facility, or a  
17 skilled nursing facility, as such terms are defined in the Health Care  
18 Facility Licensure Act;

19 (7) Medical order means a prescription, a chart order, or an order  
20 for pharmaceutical care issued by a practitioner;

21 (8) Pharmacist means any person who is licensed by the State of  
22 Nebraska to practice pharmacy;

23 (9) Pharmacist care means the provision by a pharmacist of  
24 medication therapy management, with or without the dispensing of drugs or  
25 devices, intended to achieve outcomes related to the cure or prevention  
26 of a disease, elimination or reduction of a patient's symptoms, or  
27 arresting or slowing of a disease process;

28 (10) Pharmacist remote order entry means entering an order into a  
29 computer system or drug utilization review by a pharmacist licensed to  
30 practice pharmacy in the State of Nebraska and located within the United  
31 States, pursuant to medical orders in a hospital, long-term care

1 facility, or pharmacy licensed under the Health Care Facility Licensure  
2 Act;

3 (11) Practice of pharmacy means (a) the interpretation, evaluation,  
4 and implementation of a medical order, (b) the dispensing of drugs and  
5 devices, (c) drug or biological product selection, (d) the administration  
6 of drugs or devices, (e) drug utilization review, (f) patient counseling,  
7 (g) the provision of pharmaceutical care, and (h) the responsibility for  
8 compounding and labeling of dispensed or repackaged drugs and devices,  
9 proper and safe storage of drugs and devices, and maintenance of proper  
10 records. The active practice of pharmacy means the performance of the  
11 functions set out in this subdivision by a pharmacist as his or her  
12 principal or ordinary occupation;

13 (12) Practitioner means a certified registered nurse anesthetist, a  
14 certified nurse midwife, a dentist, an optometrist, a nurse practitioner,  
15 a physician assistant, a physician, a podiatrist, or a veterinarian;

16 (13) Prescription means an order for a drug or device issued by a  
17 practitioner for a specific patient, for emergency use, or for use in  
18 immunizations. Prescription does not include a chart order;

19 (14) Prescription medication distribution machine means a type of  
20 automated medication system that packages, labels, or counts medication  
21 in preparation for dispensing of medications by a pharmacist pursuant to  
22 a prescription; and

23 (15) Telepharmacy means the provision of pharmacist care, by a  
24 pharmacist located within the United States, using telecommunications,  
25 remote order entry, or other automations and technologies to deliver care  
26 to patients or their agents who are located at sites other than where the  
27 pharmacist is located.

28 Sec. 14. Original section 38-2891, Reissue Revised Statutes of  
29 Nebraska, section 71-2445, Revised Statutes Cumulative Supplement, 2014,  
30 and sections 38-2801, 38-2837, 38-28,108, 38-28,109, 38-28,110,  
31 38-28,111, 38-28,112, 38-28,113, 38-28,114, 38-28,115, and 38-28,116,

1 Revised Statutes Supplement, 2015, are repealed.