

ASSEMBLY BILL

No. 1430

Introduced by Assembly Member Bates

February 26, 1999

An act to amend Sections 4059, 4059.5, 4070, 4071, and 4072 of the Business and Professions Code, and to amend Sections 11164, 11167.5, 11250, and 11251 of, and to repeal Section 11256 of, the Health and Safety Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1430, as introduced, Bates. Prescriptions: electronic transmissions.

(1) Existing law prohibits any person from furnishing any dangerous drug or dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. Dangerous drugs or devices may only be ordered by an entity licensed by the California State Board of Pharmacy and must be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or other designated pharmacist, as specified. A dangerous drug or dangerous device transferred, sold, or delivered to any person in the state may only be transferred, sold, or delivered to an entity licensed by the board, to a manufacturer, or to an ultimate user or the user's agent.

Existing law requires that oral and electronic data or image transmission of prescriptions be reduced to writing. A person who knowingly violates these provisions is guilty of a misdemeanor.

This bill would revise those provisions to state that when dangerous drugs or dangerous devices are ordered by an entity licensed by the board and must be delivered to the licensed premises, those drugs or devices must be signed for and received by a person licensed by the board. The bill would also permit a dangerous drug or dangerous device to be transferred, sold, or delivered to an entity authorized by law to possess or handle dangerous drugs or dangerous devices. The bill would also revise the provision limiting the transfer, sale, or delivery of those drugs and devices to ultimate users or their agents, as specified, and make a related change.

The bill would provide that a pharmacy receiving an electronic data or image transmission shall not be required to reduce that prescription to writing or to hard copy form as long as the pharmacy is able to readily produce a hard copy upon request. The bill would also authorize prescribers and pharmacists to enter prescriptions and orders, as defined, directly into a pharmacy's or hospital's computer from any location, with permission of the pharmacy or hospital. The bill would similarly permit a prescriber to authorize his or her agent to enter a prescription on his or her behalf directly into a furnisher's computer, with permission of the furnisher. Since these acts may be undertaken only with permission, as specified, and since a violation of these provisions would be a crime, the bill would create a new crime, thereby imposing a state-mandated local program.

(2) Existing law provides that within 24 hours after any purchaser in this state gives an order for a controlled substance, as specified, to, or makes any contract or agreement for purchases from or sales by, an out-of-state wholesaler or manufacturer of any controlled substance for delivery in this state, the purchaser must forward to the Attorney General a copy of the order, contract, or agreement, as specified.

The bill would delete that provision. The bill would make other related changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4059 of the Business and
2 Professions Code is amended to read:

3 4059. (a) No person shall furnish any dangerous
4 drug, except upon the prescription of a physician, dentist,
5 podiatrist, optometrist, or veterinarian. No person shall
6 furnish any dangerous device, except upon the
7 prescription of a physician, dentist, podiatrist,
8 optometrist, or veterinarian.

9 (b) This section shall not apply to the furnishing of any
10 dangerous drug or dangerous device by a manufacturer,
11 wholesaler or pharmacy to each other or to a physician,
12 dentist, podiatrist, or veterinarian, *or a group of those*
13 *persons*, or to a laboratory under sales and purchase
14 records that correctly give the date, the names and
15 addresses of the supplier and the buyer, the drug or
16 device and its quantity. This section shall not apply to the
17 furnishing of any dangerous device by a manufacturer,
18 wholesaler, or pharmacy to a physical therapist acting
19 within the scope of his or her license under sales and
20 purchase records that correctly provide the date the
21 device is provided, the names and addresses of the
22 supplier and the buyer, and a description of the device
23 and the quantity supplied.

24 (c) A pharmacist, or a person exempted pursuant to
25 Section 4054, may distribute dangerous drugs and
26 dangerous devices directly to dialysis patients pursuant to
27 regulations adopted by the board. The board shall adopt
28 any regulations as are necessary to ensure the safe
29 distribution of these drugs and devices to dialysis patients
30 without interruption thereof. A person who violates a
31 regulation adopted pursuant to this subdivision shall be
32 liable upon order of the board to surrender his or her
33 personal license. These penalties shall be in addition to



1 penalties that may be imposed pursuant to Section 4301.
2 If the board finds any dialysis drugs or devices distributed
3 pursuant to this subdivision to be ineffective or unsafe for
4 the intended use, the board may institute immediate
5 recall of any or all of the drugs or devices distributed to
6 individual patients.

7 (d) Home dialysis patients who receive any drugs or
8 devices pursuant to subdivision (c) shall have completed
9 a full course of home training given by a dialysis center
10 licensed by the State Department of Health Services. The
11 physician prescribing the dialysis products shall submit
12 proof satisfactory to the manufacturer or wholesaler that
13 the patient has completed the program.

14 (e) A pharmacist may furnish a dangerous drug
15 authorized for use pursuant to Section 2620.3 to a physical
16 therapist or may furnish topical pharmaceutical agents
17 authorized for use pursuant to paragraph (5) of
18 subdivision (a) of Section 3041 to an optometrist. A record
19 containing the date, name and address of the buyer, and
20 name and quantity of the drug shall be maintained. This
21 subdivision shall not be construed to authorize the
22 furnishing of a controlled substance.

23 (f) A medical device retailer shall dispense, furnish,
24 transfer, or sell a dangerous device only to another
25 medical device retailer, a pharmacy, a physician, a
26 licensed health care facility, a licensed physical therapist,
27 or a patient or his or her personal representative.

28 (g) A pharmacist may furnish
29 electroneuromyographic needle electrodes or
30 hypodermic needles used for the purpose of placing wire
31 electrodes for kinesiological electromyographic testing to
32 physical therapists who are certified by the Physical
33 Therapy Examining Committee of California to perform
34 tissue penetration in accordance with Section 2620.5.

35 (h) Nothing in this section shall be construed as
36 permitting a licensed physical therapist to dispense or
37 furnish a dangerous device without a prescription of a
38 physician, dentist, podiatrist, or veterinarian.

39 (i) A veterinary food-animal drug retailer shall
40 dispense, furnish, transfer, or sell veterinary food-animal



1 drugs only to another veterinary food-animal drug
2 retailer, a pharmacy, a veterinarian, or to a veterinarian's
3 client pursuant to a prescription from the veterinarian for
4 food-producing animals.

5 SEC. 2. Section 4059.5 of the Business and Professions
6 Code is amended to read:

7 4059.5. (a) Except as otherwise provided ~~in this~~
8 ~~chapter,~~ *by law, when* dangerous drugs or dangerous
9 devices ~~may only be~~ *are* ordered by an entity licensed by
10 the board and must be delivered to the licensed premises
11 ~~and, those drugs or devices must be~~ signed for and
12 received by ~~the pharmacist-in-charge or, in his or her~~
13 ~~absence, another pharmacist designated by the~~
14 ~~pharmacist-in-charge~~ *a person licensed by the board.*
15 Where a licensee is permitted to operate through an
16 exemptee, the exemptee may sign for and receive the
17 delivery.

18 (b) A dangerous drug or dangerous device
19 transferred, sold, or delivered to any person within this
20 state shall be transferred, sold, or delivered only to an
21 entity licensed by the board, to a manufacturer, ~~or an~~
22 ~~entity authorized by law to possess or handle dangerous~~
23 ~~drugs or dangerous devices, or as provided by Section~~
24 ~~4059~~ to an ultimate user or the ultimate user's agent.

25 (c) Notwithstanding subdivisions (a) and (b),
26 deliveries to a hospital pharmacy may be made to a
27 central receiving location within the hospital. However,
28 the dangerous drugs or dangerous devices shall be
29 delivered to the licensed pharmacy premises within one
30 working day following receipt by the hospital, and ~~the~~
31 ~~pharmacist~~ *a board licensee* on duty at that time shall
32 immediately inventory the drugs or devices.

33 (d) Notwithstanding any other provision of law, a
34 dangerous drug or dangerous device may be ordered by
35 and provided to a manufacturer, *or* physician, dentist,
36 podiatrist, optometrist, veterinarian, or laboratory, or a
37 physical therapist acting within the scope of his or her
38 license, *or any group of those persons.* Any person or
39 entity receiving delivery of any dangerous drugs or
40 devices, or a duly authorized representative of the person



1 or entity, shall sign for the receipt of the dangerous drugs
2 or dangerous devices.

3 (e) A dangerous drug or dangerous device shall not be
4 transferred, sold, or delivered to any person outside this
5 state, whether foreign or domestic, unless the transferor,
6 seller, or deliverer does so in compliance with the laws of
7 this state and of the United States and of the state or
8 country to which the drugs or devices are to be
9 transferred, sold, or delivered. Compliance with the laws
10 of this state and the United States and of the state or
11 country to which the drugs or devices are to be delivered
12 shall include, but not be limited to, determining that the
13 recipient of the drugs or devices is authorized by law to
14 receive the drugs or devices.

15 SEC. 3. Section 4070 of the Business and Professions
16 Code is amended to read:

17 4070. Except as provided in Section 4019, an oral ~~or an~~
18 ~~electronic data transmission prescription as defined in~~
19 ~~subdivision (c) of Section 4040~~ *prescription* shall as soon
20 as practicable be reduced to writing by the pharmacist
21 and shall be filled by, or under the direction of, the
22 pharmacist. The pharmacist need not reduce to writing
23 the address, telephone number, license classification,
24 federal registry number of the prescriber, or the address
25 of the patient or patients if the information is readily
26 retrievable in the pharmacy. *A pharmacy receiving an*
27 *electronic data or image transmission prescription shall*
28 *not be required to reduce that prescription to writing or*
29 *to hard copy form as long as the pharmacy is able to*
30 *readily produce a hard copy upon request.*
31 *Notwithstanding any other provision of law, a prescriber,*
32 *a prescriber's authorized agent, or a pharmacist, may*
33 *enter prescriptions or an "order," as defined in Section*
34 *4019, directly to indirectly into a pharmacy's or hospital's*
35 *computer from any location with the permission of the*
36 *pharmacy or hospital. Those entries for prescriptions shall*
37 *be considered electronic transmission prescriptions.*

38 SEC. 4. Section 4071 of the Business and Professions
39 Code is amended to read:



1 4071. Notwithstanding any other provision of law, a
2 prescriber may authorize his or her agent on his or her
3 behalf to orally or electronically transmit a prescription
4 to the furnisher *or to enter a prescription directly or*
5 *indirectly into the furnisher's computer with the*
6 *furnisher's permission.* The furnisher shall make a
7 reasonable effort to ~~determine~~ *ensure* that the person
8 who transmits the prescription is authorized to do so and
9 ~~shall record~~ the name of the authorized agent of the
10 prescriber who transmits the order *shall be recorded and*
11 *readily retrievable.*

12 This section shall not apply to orders for Schedule II
13 controlled substances *except as permitted under federal*
14 *law, including a valid regulation or policy administered*
15 *by a federal agency.*

16 SEC. 5. Section 4072 of the Business and Professions
17 Code is amended to read:

18 4072. (a) Notwithstanding any other provision of
19 law, a pharmacist, registered nurse, licensed vocational
20 nurse, licensed psychiatric technician, or other healing
21 arts licentiate, if so authorized by administrative
22 regulation, who is employed by or serves as a consultant
23 for a licensed skilled nursing, intermediate care, or other
24 health care facility, may orally or electronically transmit
25 to the furnisher a prescription lawfully ordered by a
26 person authorized to prescribe drugs or devices pursuant
27 to Sections 4040 and 4070. The furnisher shall take
28 appropriate steps to determine that the person who
29 transmits the prescription is authorized to do so and shall
30 record the name of the person who transmits the order.
31 This section shall not apply to orders for Schedule II
32 controlled substances *except as permitted under federal*
33 *law, including a valid regulation or policy administered*
34 *by a federal agency.*

35 (b) In enacting this section, the Legislature recognizes
36 and affirms the role of the Department of Health Services
37 in regulating drug order processing requirements for
38 licensed health care facilities as set forth in Title 22 of the
39 California Code of Regulations as they may be amended
40 from time to time.



1 SEC. 6. Section 11164 of the Health and Safety Code
2 is amended to read:

3 11164. Except as provided in Section 11167, no person
4 shall prescribe a controlled substance, nor shall any
5 person fill, compound, or dispense such a prescription
6 unless it complies with the requirements of this section.

7 (a) Each prescription for a controlled substance
8 classified in Schedule II shall be wholly written in ink or
9 indelible pencil in the handwriting of the prescriber upon
10 the official prescription form issued by the Department
11 of Justice. Each prescription shall be prepared in
12 triplicate, signed, and dated by the prescriber, and shall
13 contain the name and address of the person for whom the
14 controlled substance is prescribed, the name, quantity,
15 and strength of the controlled substance prescribed,
16 directions for use, and the address, category of
17 professional licensure, and the federal controlled
18 substance registration number of the prescriber. The
19 original and duplicate of the prescription shall be
20 delivered to the pharmacist filling the prescription. The
21 duplicate shall be retained by the pharmacist and the
22 original, properly endorsed by the pharmacist with the
23 name and address of the pharmacy, the pharmacy's state
24 license number, the date the prescription was filled and
25 the signature of the pharmacist, shall be transmitted to
26 the Department of Justice at the end of the month in
27 which the prescription was filled. Upon receipt of an
28 incompletely prepared official prescription form of the
29 Department of Justice, the pharmacist may enter on the
30 face of the prescription the address of the patient.

31 (b) Each prescription for a controlled substance
32 classified in Schedule III, IV, or V, except as authorized
33 by subdivision (c), shall be subject to the following
34 requirements:

35 (1) The prescription shall be signed and dated by the
36 prescriber and shall contain the name of the person for
37 whom the controlled substance is prescribed, the name
38 and quantity of the controlled substance prescribed, and
39 directions for use. With respect to prescriptions for
40 controlled substances classified in Schedules III and IV,



1 the signature, date, and information required by this
2 paragraph shall be wholly written in ink or indelible
3 pencil in the handwriting of the prescriber.

4 (2) In addition, the prescription shall contain the
5 name, address, telephone number, category of
6 professional licensure, and federal controlled substance
7 registration number of the prescriber. The information
8 required by this paragraph shall be either preprinted
9 upon the prescription blank, typewritten, rubber
10 stamped, or printed by hand. Notwithstanding any
11 provision in this section, the prescriber's address,
12 telephone number, category of professional licensure, or
13 federal controlled substances registration number need
14 not appear on the prescription if that information is
15 readily retrievable in the pharmacy.

16 (3) The prescription shall also contain the address of
17 the person for whom the controlled substance is
18 prescribed. If the prescriber does not specify this address
19 on the prescription, the pharmacist filling the
20 prescription or an employee acting under the direction
21 of the pharmacist shall write or type the address on the
22 prescription or maintain this information in a readily
23 retrievable form in the pharmacy.

24 (c) Any controlled substance classified in Schedule III,
25 IV, or V may be dispensed upon an oral or electronically
26 transmitted prescription, which shall be reduced to
27 writing by the pharmacist ~~filling~~ *receiving* the
28 prescription or by any other person expressly authorized
29 by provisions of the Business and Professions Code. The
30 date of issue of the prescription and all the information
31 required for a written prescription by subdivision (b)
32 shall be included in the written record of the prescription.
33 The pharmacist need not reduce to writing the address,
34 telephone number, license classification, or federal
35 registry number of the prescriber or the address of the
36 patient if that information is readily retrievable in the
37 pharmacy. Pursuant to authorization of the prescriber,
38 any employee of the prescriber on behalf of the
39 prescriber may orally or electronically transmit a
40 prescription for a controlled substance classified in



1 Schedule III, IV, or V, if in these cases the written record
2 of the prescription required by this subdivision specifies
3 the name of the employee of the prescriber transmitting
4 the prescription.

5 (d) The use of commonly used abbreviations shall not
6 invalidate an otherwise valid prescription.

7 (e) Notwithstanding any provision of subdivisions (b)
8 and (c), prescriptions for a controlled substance classified
9 in Schedule V may be for more than one person in the
10 same family with the same medical need.

11 (f) In addition to the prescriber's record required by
12 Section 11190, any practitioner dispensing a controlled
13 substance classified in Schedule II in accordance with
14 subdivision (b) of Section 11158 shall prepare a written
15 record thereof on the official forms issued by the
16 Department of Justice, pursuant to Section 11161, and
17 shall transmit the original to the Department of Justice in
18 accordance with any rules that the department may
19 adopt for completion and transmittal of the forms.

20 *(g) Notwithstanding any provision of this section or*
21 *any other provision of law, a pharmacy receiving an*
22 *electronic data or image transmission prescription shall*
23 *not be required to reduce that prescription to writing or*
24 *to hard copy form as long as the pharmacy is able to*
25 *readily produce a hard copy upon request.*
26 *Notwithstanding any other provision of law, a prescriber,*
27 *a prescriber's authorized agent, or a pharmacist, may*
28 *enter prescriptions or an "order," as defined in Section*
29 *4019 of the Business and Professions Code, directly or*
30 *indirectly into a pharmacy's or hospital's computer from*
31 *any location with the permission of the pharmacy or*
32 *hospital. Those entries for prescriptions shall be*
33 *considered electronic transmission prescriptions. This*
34 *subdivision shall not apply to prescriptions or orders for*
35 *Schedule II controlled substances except as permitted by*
36 *federal law.*

37 SEC. 7. Section 11167.5 of the Health and Safety Code
38 is amended to read:

39 11167.5. (a) An order for a controlled substance
40 classified in Schedule II in a licensed skilled nursing



1 facility, an intermediate care facility, or a licensed home
2 health agency providing hospice care may be dispensed
3 upon an oral or electronically transmitted prescription.
4 Prior to filling the prescription, the pharmacist shall
5 reduce ~~it~~ *an oral prescription* to writing in ink or indelible
6 pencil in the handwriting of the pharmacist upon an
7 official prescription form issued by the Department of
8 Justice for that purpose. The prescriptions shall be
9 prepared in triplicate and shall contain the date the
10 prescription was orally ~~or electronically~~ transmitted by
11 the prescriber, the name of the person for whom the
12 prescription was authorized, the name and address of the
13 licensed facility or home health agency providing hospice
14 care in which that person is a patient, the name and
15 quantity of the controlled substance prescribed, the
16 directions for use, and the name, address, category of
17 professional licensure, and federal controlled substance
18 registration number of the prescriber. The duplicate shall
19 be retained by the pharmacist, and the triplicate shall be
20 forwarded to the prescriber by the end of the month in
21 which the prescription was issued. The original shall be
22 properly endorsed by the pharmacist with the
23 pharmacy's state license number, the signature of the
24 pharmacist, the name and address of the pharmacy, and
25 the signature of the person who received the controlled
26 substances for the licensed facility or home health agency
27 providing hospice care and shall be forwarded by the
28 pharmacist to the Department of Justice at the end of the
29 month in which the prescription was filled. A skilled
30 nursing facility, intermediate care facility, or licensed
31 home health agency providing hospice care shall forward
32 to the dispensing pharmacist a copy of any signed
33 telephone orders, chart orders, or related documentation
34 substantiating each oral or electronically transmitted
35 prescription transaction under this section. *This section*
36 *shall only apply as permitted under federal law, including*
37 *a lawful regulation or policy administered by a federal*
38 *agency.*

39 (b) For the purposes of this section, "hospice care"
40 means interdisciplinary health care which is designed to



1 alleviate the physical, emotional, social, and spiritual
2 discomforts of an individual who is experiencing the last
3 phases of a terminal disease and to provide supportive
4 care for the primary care person and the family of the
5 patient under hospice care.

6 SEC. 8. Section 11250 of the Health and Safety Code
7 is amended to read:

8 11250. No prescription is required in case of the sale
9 of controlled substances at retail in pharmacies by
10 pharmacists to any of the following:

11 (a) Physicians.

12 (b) Dentists.

13 (c) Podiatrists.

14 (d) Veterinarians.

15 (e) Pharmacists acting within the scope of a project
16 authorized under Article 1 (commencing with Section
17 128125) of Chapter 3 of Part 3 of Division 107, or
18 registered nurses acting within the scope of a project
19 authorized under Article 1 (commencing with Section
20 128125) of Chapter 3 of Part 3 of Division 107, or physician
21 assistants acting within the scope of a project authorized
22 under Article 1 (commencing with Section 128125) of
23 Chapter 3 of Part 3 of Division 107.

24 (f) *A group comprised of the persons listed in*
25 *subdivisions (a) to (e), inclusive.*

26 In any sale mentioned in this article, there shall be
27 executed any written order that may otherwise be
28 required by federal law relating to the production,
29 importation, exportation, manufacture, compounding,
30 distributing, dispensing, or control of controlled
31 substances.

32 SEC. 9. Section 11251 of the Health and Safety Code
33 is amended to read:

34 11251. No prescription is required in case of sales at
35 wholesale by pharmacies, jobbers, wholesalers, and
36 manufacturers to any of the following:

37 (a) Pharmacies as defined in the Business and
38 Professions Code.

39 (b) Physicians.

40 (c) Dentists.



- 1 (d) Podiatrists.
- 2 (e) Veterinarians.
- 3 (f) Other jobbers, wholesalers or manufacturers.
- 4 (g) Pharmacists acting within the scope of a project
- 5 authorized under Article 1 (commencing with Section
- 6 128125) of Chapter 3 of Part 3 of Division 107, or
- 7 registered nurses acting within the scope of a project
- 8 authorized under Article 1 (commencing with Section
- 9 128125) of Chapter 3 of Part 3 of Division 107, or physician
- 10 assistants acting within the scope of a project authorized
- 11 under Article 1 (commencing with Section 128125) of
- 12 Chapter 3 of Part 3 of Division 107.

13 *(h) A group comprised of the persons listed in*
14 *subdivisions (b) to (g), inclusive.*

15 SEC. 10. Section 11256 of the Health and Safety Code
16 is repealed.

17 ~~11256. Within 24 hours after any purchaser in this~~
18 ~~state gives any order for a controlled substance classified~~
19 ~~in Schedule II to, or makes any contract or agreement for~~
20 ~~purchases from or sales by, an out-of-state wholesaler or~~
21 ~~manufacturer of any controlled substances for delivery in~~
22 ~~this state, the purchaser shall forward to the Attorney~~
23 ~~General by registered mail a true and correct copy of the~~
24 ~~order, contract, or agreement.~~

25 SEC. 11. No reimbursement is required by this act
26 pursuant to Section 6 of Article XIII B of the California
27 Constitution because the only costs that may be incurred
28 by a local agency or school district will be incurred
29 because this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition
33 of a crime within the meaning of Section 6 of Article
34 XIII B of the California Constitution.

