COMMITTEE AMENDMENT ADOPTED AND AMENDED

March 31, 2021

**S. 628**

Introduced by Senator Davis

S. Printed 3/31/21--S.

Read the first time March 2, 2021.

**A** **BILL**

TO ENACT THE “PHARMACY ACCESS ACT”; TO AMEND CHAPTER 43, TITLE 40 OF THE 1976 CODE, RELATING TO THE SOUTH CAROLINA PHARMACY PRACTICE ACT, BY ADDING SECTIONS 40-43-210 THROUGH 40-43-280, TO PROVIDE THAT THE SOUTH CAROLINA PHARMACY PRACTICE ACT DOES NOT CREATE A DUTY OF CARE FOR A PERSON WHO PRESCRIBES OR DISPENSES A SELF‑ADMINISTERED HORMONAL CONTRACEPTIVE OR ADMINISTERS AN INJECTABLE HORMONAL CONTRACEPTIVE, TO PROVIDE THAT CERTAIN PHARMACISTS MAY DISPENSE A SELF‑ADMINISTERED HORMONAL CONTRACEPTIVE OR ADMINISTER AN INJECTABLE HORMONAL CONTRACEPTIVE PURSUANT TO A STANDING PRESCRIPTION DRUG ORDER, TO PROVIDE A JOINT PROTOCOL FOR DISPENSING A SELF‑ADMINISTERED HORMONAL CONTRACEPTIVE OR ADMINISTERING AN INJECTABLE HORMONAL CONTRACEPTIVE WITHOUT A PATIENT‑SPECIFIC WRITTEN ORDER, TO REQUIRE CONTINUING EDUCATION FOR A PHARMACIST DISPENSING A SELF‑ADMINISTERED HORMONAL CONTRACEPTIVE OR ADMINISTERING AN INJECTABLE HORMONAL CONTRACEPTIVE, TO IMPOSE REQUIREMENTS ON A PHARMACIST WHO DISPENSES A SELF‑ADMINISTERED HORMONAL CONTRACEPTIVE OR ADMINISTERS AN INJECTABLE HORMONAL CONTRACEPTIVE, TO PROVIDE THAT A PRESCRIBER WHO ISSUES A STANDING PRESCRIPTION DRUG ORDER FOR A SELF‑ADMINISTERED HORMONAL CONTRACEPTIVE OR INJECTABLE HORMONAL CONTRACEPTIVE IS NOT LIABLE FOR ANY CIVIL DAMAGES FOR ACTS OR OMISSIONS RESULTING FROM THE DISPENSING OR ADMINISTERING OF THE CONTRACEPTIVE, AND TO PROVIDE THAT THE SOUTH CAROLINA PHARMACY PRACTICE ACT SHALL NOT BE CONSTRUED TO REQUIRE A PHARMACIST TO DISPENSE, ADMINISTER, INJECT, OR OTHERWISE PROVIDE HORMONAL CONTRACEPTIVES; AND TO AMEND ARTICLE 1, CHAPTER 6, TITLE 44 OF THE 1976 CODE, RELATING TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, BY ADDING SECTION 44-6-115, TO PROVIDE FOR PHARMACIST SERVICES COVERED UNDER MEDICAID; AND TO DEFINE NECESSARY TERMS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act shall be referred to as the “Pharmacy Access Act”.

SECTION 2. Chapter 43, Title 40 of the 1976 Code is amended by adding:

“Section 40-43-210. As used in this chapter:

(1) ‘Administer’ has the same meaning as in Section 40‑43‑30.

(2) ‘Department’ means the Department of Labor, Licensing and Regulation.

(3) ‘Dispense’ has the same meaning as in Section 40‑43‑30.

(4) ‘Injectable hormonal contraceptive’ means a drug composed of a hormone or a combination of hormones that is approved by the United States Food and Drug Administration to prevent pregnancy and that a practitioner administers to a patient by injection. ‘Injectable hormonal contraceptive’ does not include any drug intended to terminate a pregnancy.

(5) ‘Local health board’ has the same meaning as in Chapter 3, Title 44.

(6) ‘Patient counseling’ has the same meaning as in Section 40‑43‑30.

(7) ‘Pharmacist’ has the same meaning as in Section 40‑43‑30.

(8) ‘Practitioner’ has the same meaning as in Section 40-47-20.

(9) ‘Prescriber’ means a physician licensed pursuant to Chapter 47, Title 40; an advanced practice registered nurse licensed pursuant to Chapter 33, Title 40 and prescribing in accordance with the requirements of that chapter; or a physician assistant licensed pursuant to Article 7, Chapter 47, Title 40 and prescribing in accordance with the requirements of that article.

(10) ‘Self‑administered hormonal contraceptive’ means a drug composed of a hormone or a combination of hormones that is approved by the United States Food and Drug Administration to prevent pregnancy and that the patient to whom the drug is prescribed may administer to himself. ‘Self‑administered hormonal contraceptive’ includes an oral hormonal contraceptive, a hormonal vaginal ring, and a hormonal contraceptive patch. ‘Self‑administered hormonal contraceptive’ does not include any drug intended to terminate a pregnancy.

Section 40-43-220. This chapter does not create a duty of care for a person who prescribes or dispenses a self‑administered hormonal contraceptive or administers an injectable hormonal contraceptive.

Section 40-43-230. (A) A person licensed under the South Carolina Pharmacy Practice Act who is acting in good faith and exercising reasonable care as a pharmacist and who is employed by a hospital or a resident pharmacy that is permitted by this State may dispense a self‑administered hormonal contraceptive or administer an injectable hormonal contraceptive pursuant to a standing prescription drug order by a prescriber to a patient who is:

(1) eighteen years of age or older; or

(2) under eighteen years of age if the person has evidence of a previous prescription from a practitioner for a self‑administered hormonal contraceptive or an injectable hormonal contraceptive.

Section 40-43-240. (A) The Board of Medical Examiners and the Board of Pharmacy must issue a written joint protocol to authorize a pharmacist to dispense a self‑administered hormonal contraceptive or administer an injectable hormonal contraceptive without a patient‑specific written order.

(B) The written joint protocol must address, at a minimum, the following requirements:

(1) education or training requirements that the Board of Medical Examiners and the Board of Pharmacy determine to be necessary for a pharmacist to dispense a self-administered hormonal contraceptive or administer an injectable hormonal contraceptive;

(2) information that a pharmacist must provide to a patient prior to dispensing a self-administered hormonal contraceptive or administering an injectable hormonal contraceptive and confirmation that the required information was provided to the patient;

(3) documentation regarding the dispensing of a self-administered hormonal contraceptive or the administering of an injectable hormonal contraceptive;

(4) notification to a patient’s designated practitioner that a self-administered hormonal contraceptive was dispensed to the patient or that an injectable hormonal contraceptive was administered to the patient;

(5) evaluation and review of the dispensing and administration practices used by pharmacists authorized to dispense a self‑administered hormonal contraceptive or administer an injectable hormonal contraceptive; and

(6) any additional provisions that the Board of Medical Examiners and the Board of Pharmacy determine to be necessary or appropriate for inclusion in the protocol, including any reporting requirements.

(C) For each new patient requesting contraception and at least every twelve months for each returning patient, the written joint protocol must require a pharmacist dispensing or administering contraceptives pursuant to this chapter to:

(1) obtain a completed self-screening risk assessment;

(2) utilize a standard procedures algorithm as established by the Board of Medical Examiners and the Board of Pharmacy to perform a patient assessment;

(3) dispense, if clinically appropriate, a self‑administered hormonal contraceptive or administer an injectable hormonal contraceptive, or refer the patient to a practitioner;

(4) provide the patient with a visit summary;

(5) advise the patient to consult with a practitioner;

(6) refer any patient who may be subject to abuse to the appropriate social services agency; and

(7) ensure that the pharmacy provides appropriate space to prevent the spread of infection and ensure confidentiality.

(D) The Board of Medical Examiners and the Board of Pharmacy may appoint an advisory committee of healthcare professionals licensed in this State to advise and assist in the development of the joint protocol for their consideration.

(E) Health insurers and the State Health Plan must provide coverage for services provided under this chapter and reimburse providers on the same basis and at the same payment rate that would apply if the services had been rendered by a physician.

Section 40-43-250. (A) Prior to dispensing self‑administered hormonal contraceptives or administering injectable hormonal contraceptives pursuant to Section 40-43-240, a pharmacist must have completed a certificate program that has been developed by the deans of the pharmacy schools in this State, as specified in the joint protocol, that is program-specific to self-administered hormonal contraceptives or injectable hormonal contraceptives, that includes the application of the United States Medical Eligibility Criteria for Contraceptive Use, and that includes other Centers for Disease Control and Prevention guidance on contraception. To maintain eligibility, a pharmacist must complete at least three hours of continuing education per year that is offered by an entity approved by the Board of Medical Examiners and the Board of Pharmacy.

(B) An equivalent, curriculum‑based training program completed on or after January 2021 in an accredited South Carolina pharmacy school satisfies the initial education requirement.

Section 40-43-260. (A) A pharmacist who dispenses a self‑administered hormonal contraceptive or administers an injectable hormonal contraceptive pursuant to this chapter shall:

(1) obtain a completed self‑screening risk assessment questionnaire that has been approved by the department, in collaboration with the Board of Pharmacy and the Board of Medical Examiners, from the patient before dispensing the self‑administered hormonal contraceptive or administering the injectable hormonal contraceptive. If the results of the assessment indicate that it is unsafe to dispense a self‑administered hormonal contraceptive or administer an injectable hormonal contraceptive to a patient, then the pharmacist may not dispense a self‑administered hormonal contraceptive or administer an injectable hormonal contraceptive to the patient, shall refer the patient to a practitioner, and may not continue to dispense a self‑administered hormonal contraceptive or administer an injectable hormonal contraceptive to the patient for more than twenty-four months after the date of the initial prescription without evidence that the patient has consulted with a practitioner during the preceding twenty-four months; and

(2) provide the patient with written information regarding:

(a) the importance of seeing the patient’s practitioner to obtain recommended tests and screening;

(b) the effectiveness and availability of long‑acting reversible contraceptives as an alternative to self‑administered hormonal contraceptives or injectable hormonal contraceptives;

(c) a copy of the record of the encounter with the patient that includes the patient’s completed assessment questionnaire pursuant to item (1); and

(d) a description of the contraceptive dispensed or administered, or the basis for not dispensing or administering a contraceptive.

(B) If a pharmacist dispenses a self‑administered hormonal contraceptive or administers an injectable hormonal contraceptive to a patient, then the pharmacist shall, at a minimum, provide patient counseling to the patient regarding:

(1) the appropriate administration and storage of a self‑administered hormonal contraceptive, if appropriate;

(2) any potential side effects and risks of a self‑administered hormonal contraceptive or injectable hormonal contraceptive;

(3) the need for backup contraception;

(4) when to seek emergency medical attention; and

(5) the risk of contracting a sexually transmitted infection or disease, along with ways to reduce the risk of contraction.”

Section 40-43-270. A prescriber who issues a standing prescription drug order in accordance with Section 40-43-260 is not liable for any civil damages for acts or omissions resulting from the dispensing of a self‑administered hormonal contraceptive or the administering of an injectable hormonal contraceptive under this chapter.

SECTION 3. Article 1, Chapter 6, Title 44 of the 1976 Code is amended by adding:

“Section 44-6-115. (A) Pharmacy services are a benefit under South Carolina Medicaid, subject to approval by the federal Centers for Medicare and Medicaid Services. The department shall establish a fee schedule for the list of pharmacy services.

(B)(1) The following services are covered pharmacy services that may be provided to a Medicaid beneficiary:

(a) dispensing self‑administered hormonal contraceptives, as outlined and authorized in Section 40-43‑230; and

(b) administering injectable hormonal contraceptives, as outlined and authorized in Section 40-43‑230.

(2) Covered pharmacy services shall be subject to department protocols and utilization controls.

(C) A pharmacist shall be enrolled as an ordering, referring, and dispensing provider under the Medicaid program prior to rendering a pharmacist service that is submitted by a Medicaid pharmacy provider for reimbursement pursuant to this section.

(D) The director of the department shall seek any necessary federal approvals to implement this section. This section shall not be implemented until the necessary federal approvals are obtained and shall be implemented only to the extent that federal financial participation is available.

(E) This section does not restrict or prohibit any services currently provided by pharmacists as authorized by law, including, but not limited to, this chapter or the Medicaid state plan.”

SECTION 4. The Board of Medical Examiners and the Board of Pharmacy must issue a written joint protocol pursuant to Section 40-43-240 not later than six months after the passage of this act.

SECTION 5. This act takes effect upon the issuance of a written joint protocol pursuant to SECTION 4 of this act.

‑‑‑‑XX‑‑‑‑