



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4796/1
JPC:cde

2023 SENATE BILL 705

November 21, 2023 - Introduced by Senators CABRAL-GUEVARA and NASS, cosponsored by Representatives MURPHY, SORTWELL, ARMSTRONG, BEHNKE, BODDEN, BRANDTJEN, EDMING, GOEBEN, MAGNAFICI, MICHALSKI, MURSAU, O'CONNOR, RETTINGER and TUSLER. Referred to Committee on Health.

1 **AN ACT** *to repeal* 450.095 (1) (a); *to amend* 50.36 (6), 450.095 (title), 450.095 (2)
2 (intro.), 450.095 (2) (a), 450.095 (2) (b) and 450.095 (2) (c); and *to create* 450.095
3 (1) (am), 450.095 (2) (am), 450.095 (2m) and 632.865 (6m) of the statutes;
4 **relating to:** the duty of a pharmacist to dispense lawfully prescribed drugs and
5 devices.

Analysis by the Legislative Reference Bureau

Under current law, a pharmacy has a duty to dispense lawfully prescribed contraceptive drugs and devices without delay unless certain factors apply, including that the prescription contains an obvious or known error or contains inadequate instructions, the prescription is contraindicated for the patient, the prescription is incompatible with another drug or device prescribed for the patient, or the prescription is potentially fraudulent. This bill expands that duty to require pharmacies to dispense any lawfully prescribed drug or device without delay. However, if any pharmacist at a pharmacy refuses to dispense a drug or device for reasons of conscience such that the pharmacy cannot fulfill the prescription order without delay, then the bill requires the pharmacy to transfer the prescription order to a different pharmacy, at the direction of the patient, that will dispense the prescribed drug or device without delay. The bill also specifies that a pharmacy may not dispense a lawfully prescribed drug or device if there is an absolute contraindication for the prescribed drug or device, rather than just a contraindication. Under the bill, “absolute contraindication” is defined to mean any

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condition present in a patient that makes a particular drug or device inadvisable under any circumstances.

Further, the bill prohibits a pharmacy benefit manager from penalizing in any way a pharmacy or pharmacist from dispensing a prescribed drug or device that is prescribed for a use other than a use approved by the federal Food and Drug Administration if the prescribed drug or device is dispensed pursuant to a valid prescription order.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 50.36 (6) of the statutes is amended to read:

2 50.36 (6) If the department receives a credible complaint that a pharmacy
3 located in a hospital has violated its duty to dispense ~~contraceptive~~ drugs and devices
4 under s. 450.095 (2), the department shall refer the complaint to the department of
5 safety and professional services.

6 **SECTION 2.** 450.095 (title) of the statutes is amended to read:

7 **450.095 (title) Duty to dispense contraceptives.**

8 **SECTION 3.** 450.095 (1) (a) of the statutes is repealed.

9 **SECTION 4.** 450.095 (1) (am) of the statutes is created to read:

10 450.095 (1) (am) “Absolute contraindication” means any condition present in
11 a patient that renders a particular drug or device not safe to be used as prescribed
12 under any circumstance because of the severe or potentially life-threatening risks
13 involved.

14 **SECTION 5.** 450.095 (2) (intro.) of the statutes is amended to read:

15 450.095 (2) (intro.) Unless ~~one or more~~ any of the following applies, except as
16 provided in sub. (2m), a pharmacy shall dispense any lawfully prescribed
17 ~~contraceptive drugs and devices~~ drug or device and shall deliver ~~contraceptive drugs~~

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1 ~~and devices restricted to distribution by a pharmacy~~ the drug or device to ~~a~~ the
2 patient without delay:

3 **SECTION 6.** 450.095 (2) (a) of the statutes is amended to read:

4 450.095 (2) (a) The prescription or prescription order contains an obvious or
5 known error or contains inadequate instructions.

6 **SECTION 7.** 450.095 (2) (am) of the statutes is created to read:

7 450.095 (2) (am) A pharmacist determines after reviewing the prescription
8 order and the patient's medical records that there is an absolute contraindication for
9 the prescribed drug or device.

10 **SECTION 8.** 450.095 (2) (b) of the statutes is amended to read:

11 450.095 (2) (b) The ~~prescription is contraindicated for the patient,~~ prescribed
12 drug or device is incompatible with another drug or device prescribed for the patient,
13 or is prohibited by state or federal law.

14 **SECTION 9.** 450.095 (2) (c) of the statutes is amended to read:

15 450.095 (2) (c) The prescription or prescription order is potentially fraudulent.

16 **SECTION 10.** 450.095 (2m) of the statutes is created to read:

17 450.095 (2m) If any pharmacist at a pharmacy refuses to dispense a lawfully
18 prescribed drug or device for reasons of conscience such that the pharmacy cannot
19 fulfill a prescription or prescription order without delay, then the pharmacy shall
20 transfer the prescription or prescription order to a different pharmacy, at the
21 direction of the patient, that will dispense the prescribed drug or device without
22 delay.

23 **SECTION 11.** 632.865 (6m) of the statutes is created to read:

24 632.865 (6m) OFF-LABEL THERAPIES. No pharmacy benefit manager may in any
25 way penalize a pharmacy or pharmacist for dispensing a prescribed drug or device

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SECTION 11

1 that is prescribed for a use other than a use approved by the federal food and drug
2 administration if the prescribed drug or device is dispensed pursuant to a valid
3 prescription order, as defined in s. 450.01 (21).

4 (END)