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Emily B Caudill  
REGULATIONS COMPILER

STATEMENT OF EMERGENCY

201 KAR 2:380E + 0

The Department for Medicaid Services has requested the Board of Pharmacy promulgate this emergency regulation to ensure Medicaid patients have access to Paxlovid, the COVID-19 therapeutic drug, from pharmacies without a prescription drug order. Currently there is no mechanism for Kentucky Medicaid to compensate pharmacists for their prescribing services, despite the PREP Act, 85 Fed. Reg. 51160, allowing for pharmacists to prescribe and administer COVID-19 therapeutics. Without this emergency amendment, Medicaid patients cannot access Paxlovid from a pharmacist without a prescription drug order issued by another prescriber since the Department for Medicaid Services does not recognize pharmacists as providers. This emergency amendment will allow for a prescriber approved protocol to be reviewed for approval by the Board of Pharmacy. Once approved, the physician Director of Medicaid Services can sign a prescriber approved protocol for any pharmacist to initiate the dispensing of Paxlovid for Medicaid patients. An ordinary amendment is not a sufficient way to address this issue since COVID-19 case numbers are rising, and Medicaid patients are in need of Paxlovid now. This emergency amendment provides the Board with discretion to respond to public health emergencies rapidly without the need to go through the rulemaking process to add a specific condition to the protocol. An amendment to the current regulation is being simultaneously filed and will replace the emergency regulation. The emergency amendment is identical to the ordinary amendment.



Andy Beshear, Governor



Christopher Harlow, Executive Director

1 BOARDS AND COMMISSIONS

2 BOARD OF PHARMACY

3 201 KAR 2:380E. Board authorized protocols.

4 (EMERGENCY AMENDMENT)

5 RELATES TO: KRS 315.010(25), 315.191(1)(a), (f)

6 STATUTORY AUTHORITY: KRS 315.010(25), 315.191(1)(a), (f)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.010(25) defines a  
8 prescription drug order, which includes orders issued through protocols authorized by  
9 the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative  
10 regulations necessary to regulate and control all matters pertaining to pharmacists,  
11 pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f)  
12 authorizes the board to promulgate administrative regulations that are necessary to  
13 control the dispensing of prescription drug orders. This administrative regulation  
14 establishes procedures for board authorized protocols by which pharmacists may  
15 initiate the dispensing of noncontrolled medications or other professional services.

16 Section 1. Definition. "Prescriber" means any individual authorized to prescribe a legend  
17 drug.

18 Section 2. Procedures. A pharmacist or pharmacists may initiate the dispensing of  
19 noncontrolled medications, over-the-counter medications, or other professional services  
20 under the following conditions

1 (1) A prescriber-approved protocol that meets the minimum requirements in Section 3 of  
2 this administrative regulation is in place, and is dated and signed by the prescriber and  
3 pharmacist(s) authorized to initiate the dispensing of noncontrolled medications, over-  
4 the-counter medications, or other professional services. A pharmacist not party to the  
5 executed protocol has no authority to utilize the protocol for medication dispensing or  
6 other professional service provision;

7 (2) The protocol directs the care, based on current clinical guidelines, for acute self-  
8 limiting conditions and other minor ailments, preventative health services, and disease  
9 state monitoring and management as deemed appropriate by the board;

10 (3) The protocol has been approved by the board, who provides notice to the  
11 prescriber's licensure board within ten (10) business days of approval by the board;

12 (4) The pharmacist or pharmacists documents the dispensing event in the pharmacy  
13 management system, including:

14 (a) Documentation as required by 201 KAR ~~2:171-170~~ for the dispensing of prescription  
15 medication; and

16 (b) Documentation that the individual receiving the medication or other professional  
17 service was provided with education pursuant to Section 3(4) -4 of this administrative  
18 regulation; and

19 (5) A pharmacist shall request the individual's primary care provider's information,  
20 provided one exists, and shall provide notification to the primary care provider within two  
21 (2) business days.

22 Section 3. Minimum Requirements of Protocol. Protocols shall contain the following  
23 elements:

- 1 (1) Criteria for identifying persons eligible to receive medication therapies or other  
2 professional services under the protocol, and referral to an appropriate prescriber if the  
3 patient is high-risk or treatment is contraindicated;
- 4 (2) A list of the medications, including name, dose, route, frequency of administration,  
5 and refills authorized to be dispensed under the protocol;
- 6 (3) Procedures for how the medications are to be initiated and monitored, including a  
7 care plan implemented in accordance with clinical guidelines;
- 8 (4) Education to be provided to the person receiving the dispensed medications,  
9 including aftercare instructions, if appropriate;
- 10 (5) Procedures for documenting in the pharmacy management system all medications  
11 dispensed, including notification of the prescriber signing the protocol, if requested;
- 12 (6) Length of time protocol is in effect;
- 13 (7) Date and signature of prescriber approving the protocol;
- 14 (8) Dates and signatures of the pharmacist(s) authorized to initiate dispensing of  
15 medications or other professional services under the protocol; and
- 16 ~~(9) The date, and education or training of the pharmacist as referenced in Section 4 of  
17 this administrative regulation.~~

18 ~~Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses  
19 medication pursuant to a prescriber approved protocol shall first receive education and  
20 training in the subject matter of the protocol from a provider accredited by the  
21 Accreditation Council for Pharmacy Education or by a comparable provider approved by  
22 the board. Documentation of education shall be provided to the board upon request.  
23 Education shall be obtained prior to initiating care under the protocol.~~

1 ~~Section 5. Authorized Conditions. Board authorized protocols may be established for~~  
2 ~~the following conditions:~~

- 3 ~~(1) Acute influenza infection pursuant to recommendations by the Centers for Disease~~  
4 ~~Control and Prevention (CDC);~~
- 5 ~~(2) Acute streptococcal pharyngitis infection;~~
- 6 ~~(3) Acute, uncomplicated urinary tract infection;~~
- 7 ~~(4) Acute cutaneous or mucocutaneous fungal infection;~~
- 8 ~~(5) Alcohol use disorder utilizing naltrexone based therapy pursuant to~~  
9 ~~recommendations from the American Psychiatric Association;~~
- 10 ~~(6) Allergic rhinitis;~~
- 11 ~~(7) Anaphylaxis;~~
- 12 ~~(8) Colorectal cancer prevention and screening;~~
- 13 ~~(9) HCV infection screening;~~
- 14 ~~(10) HIV infection prophylaxis, pre exposure and post exposure pursuant to~~  
15 ~~recommendations by the CDC;~~
- 16 ~~(11) HIV infection screening pursuant to recommendations by the CDC;~~
- 17 ~~(12) Nutritional supplementation with vitamins and minerals;~~
- 18 ~~(13) Opioid use disorder pursuant to recommendations by the American Society of~~  
19 ~~Addiction Medicine;~~
- 20 ~~(14) Tobacco use disorder;~~
- 21 ~~(15) Traveler's health pursuant to recommendations by the CDC;~~
- 22 ~~(16) Tuberculosis prevention and control through skin testing, and referral as~~  
23 ~~necessary, pursuant to recommendations by the CDC; and~~

- 1 ~~(17) Self-care conditions appropriately treated with over-the-counter medications and~~
- 2 ~~products.~~

*CHITHEM*

August 8, 2022

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CHRISTOPHER HARLOW, PHARM.D.  
EXECUTIVE DIRECTOR  
BOARD OF PHARMACY

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DATE

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 27, 2022 at 9:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, Phone (502) 564-7910, Fax (502) 696-3806, email [christopher.harlow@ky.gov](mailto:christopher.harlow@ky.gov).



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

201 KAR 2:380E

Contact person: Christopher Harlow, phone (502) 564-7910, email:

Christopher.harlow@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or offer other professional services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for pharmacists to provide a high level of care to their patients, in accordance with protocols that have been provided from the prescriber and approved by the Board of Pharmacy. This will allow for discretion by the Board of Pharmacy to approve board authorized protocols as the public health need arises.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control all matters pertaining to pharmacists and pharmacies. KRS 315.191(1)(f) authorizes the Board to promulgate administrative regulations pertaining to prescription drug orders. KRS 315.010(25) defines a prescription drug order to include protocols authorized by the Board. This administrative regulation establishes criteria for protocols to be authorized by the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prescribers, pharmacists, pharmacies, patients and the public will be able to ascertain what is required for pharmacist to utilize a prescriber approved protocol.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This emergency amendment will provide the board with discretion to review protocols as public health needs arise. The Cabinet for Health and Family Services has alerted the Board of Pharmacy of the need for pharmacists to be able to bill Medicaid for Paxlovid, a therapeutic drug to treat COVID-19. Without an amendment to this regulation allowing for a prescriber approved protocol for the ordering of Paxlovid by a pharmacist, Paxlovid will not be accessible to patients from pharmacies. The Department for Medicaid Services does not recognize pharmacists as prescribers despite the language in the federal PREP Act.

(b) The necessity of the amendment to this administrative regulation: This emergency amendment will allow pharmacists to respond immediately to public health needs without the delay of going through the rulemaking process. The emergency amendment is required to ensure access to Paxlovid, the COVID-19 therapeutic drug, for Medicaid patients. Despite the federal PREP ACT, without this emergency amendment, Medicaid patients will not be able to acquire Paxlovid from a pharmacy without a prescription.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by providing the board with discretion to determine what prescriber approved protocols are appropriate as the public health need arises without going through the regulatory process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency amendment will serve the patient population that is on Medicaid by allowing them to access Paxlovid, the COVID-19 therapeutic, from pharmacies without a physician's order. Without this emergency amendment, Medicaid patients cannot be served, despite the PREP Act because the Department for Medicaid Services does not have the ability to bill Medicaid for a pharmacist's prescription.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with new amended language in the regulation. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question? Patients on Medicaid will have access to Paxlovid, the COVID-19 therapeutic drug, from pharmacies without a drug order from a health care practitioner.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists equally.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

201 KAR 2:380E

Contact person: Christopher Harlow, phone (502) 564-7910, email:

[Christopher.harlow@ky.gov](mailto:Christopher.harlow@ky.gov)

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(a)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the board in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of this administrative regulation. Not applicable.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: none

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings from this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost to regulated entities for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of this administrative regulation. Not applicable.

Cost savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: none

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have major economic impact.