

November 2, 2016 – Proposed 2017 Legislative Changes:

An Act relating to alternate board members, drug disposal program funding, impaired professionals program, pharmacy internet sites, and the definition of “practitioner.”

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 147.14, subsection 1, paragraph “e,” Iowa Code 2016, is amended to read as follows:

e. For pharmacy, five members licensed to practice pharmacy, one member who is a nationally certified and registered pharmacy technician, and two members who are not licensed to practice pharmacy, are not nationally certified or registered as a pharmacy technician, and who shall represent the general public.

Section 2. Chapter 155A, Iowa Code 2016, is amended by adding the following new section:

NEW SECTION: 155A.2A Board of pharmacy – alternate members.

1. Notwithstanding sections 17A.11, 69.16, 69.16A, 147.12, 147.14, and 147.19, the board may have a pool of up to seven alternate members, including members licensed to practice under this chapter and members not licensed to practice under this chapter, to substitute for board members who are disqualified or become unavailable for any other reason for contested case hearings.

a. The board may recommend, subject to approval by the governor, up to seven people to serve in a pool of alternate members.

b. A person serves in the pool of alternate members at the discretion of the board; however, the length of time an alternate member may serve in the pool shall not exceed

nine years. A person who serves as an alternate member may later be appointed to the board and may serve nine years, in accordance with sections 147.12 and 147.19. A former board member may serve in the pool of alternate members.

c. An alternate member licensed under this chapter shall hold an active license and shall have been actively engaged in the practice of pharmacy in the preceding three years, with the two most recent years of practice being in Iowa.

d. When a sufficient number of board members are unavailable to hear a contested case, the board may request alternate members to serve.

e. Notwithstanding section 17A.11, section 147.14, subsection 2, and section 272C.6, subsection 5:

(1) An alternate member is deemed a member of the board only for the hearing panel for which the alternate member serves.

(2) A hearing panel containing alternate members must include at least five people.

(3) The majority of a hearing panel containing alternate members shall be members of the board.

(4) The majority of a hearing panel containing alternate members shall be licensed to practice under this chapter.

(5) A decision of a hearing panel containing alternate members is considered a final decision of the board.

f. An alternate member shall not receive compensation in excess of that authorized by law for a board member.

Section 3. Section 155A.3, subsection 35, Iowa Code 2016, is amended to read as follows:

35. “*Practitioner*” means a physician, dentist, podiatric physician, veterinarian, optometrist, physician assistant, advanced registered nurse practitioner, or other person licensed or registered to prescribe, distribute, or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

Section 4. Section 155A.13B, Iowa Code 2016, is repealed.

Section 5. Section 155A.39, Iowa Code 2016, is amended to read as follows:

155A.39 Programs Program to aid monitor impaired pharmacists, pharmacist-interns, or pharmacy technicians — ~~reporting, confidentiality, immunity, and funding.~~

1. ~~A person or pharmaceutical peer review committee may report relevant facts to the board relating to the acts of a pharmacist in this state, a pharmacist-intern as defined in section 155A.3, subsection 30, or a pharmacy technician in this state if the person or peer review committee has knowledge relating to the pharmacist, pharmacist-intern, or pharmacy technician which, in the opinion of the person or pharmaceutical peer review committee, might impair competency due to chemical abuse, chemical dependence, or mental or physical illness, or which might endanger the public health and safety, or which provide grounds for disciplinary action as specified in this chapter and in the rules of the board.~~ The board may establish a review committee and may implement a program to monitor impaired pharmacists, pharmacist-interns, and pharmacy technicians pursuant to section 272C.3, subsection 1, paragraph “k.”

2. ~~A committee of a professional pharmaceutical organization, its staff, or a district or local intervenor participating in a program established to aid pharmacists, pharmacist-interns, or pharmacy technicians impaired by chemical abuse, chemical dependence, or~~

~~mental or physical illness may report in writing to the board the name of the impaired pharmacist, pharmacist-intern, or pharmacy technician together with pertinent information relating to the impairment. The board may report to a committee of a professional pharmaceutical organization or the organization's designated staff information which the board receives with regard to a pharmacist, pharmacist-intern, or pharmacy technician who may be impaired by chemical abuse, chemical dependence, or mental or physical illness.~~

~~3. Upon determination by the board that a report submitted by a peer review committee or a professional pharmaceutical organization committee is without merit, the report shall be expunged from the pharmacist's, pharmacist-intern's, or pharmacy technician's individual record in the board's office. A pharmacist, pharmacist-intern, pharmacy technician, or an authorized representative of the pharmacist, pharmacist-intern, or pharmacy technician shall be entitled on request to examine the peer review committee report or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's, pharmacist-intern's, or pharmacy technician's view with respect to any information existing in the report.~~

~~4. Notwithstanding other provisions of the Code, the records and proceedings of the board, its authorized agents, a peer review committee, or a pharmaceutical organization committee as set out in subsections 1 and 2 shall be privileged and confidential and shall not be considered public records or open records unless the affected pharmacist, pharmacist-intern, or pharmacy technician so requests and shall not be subject to a subpoena or to a discovery proceeding. The board may disclose the records and proceedings only as follows:~~

~~a. In a criminal proceeding.~~

~~b. In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order.~~

~~c. To the pharmacist licensing or disciplinary authorities of other jurisdictions.~~

~~d. To the pharmacy technician registering, licensing, or disciplinary authorities of other jurisdictions.~~

~~e. Pursuant to an order of a court of competent jurisdiction.~~

~~f. Pursuant to subsection 11.~~

~~g. As otherwise provided by law.~~

~~5. 2.~~ An employee or a member of the board, a peer review committee member, a professional pharmaceutical organization committee member, a professional pharmaceutical organization district or local intervenor, or any other person who furnishes information, data, reports, or records in good faith for the purpose of aiding the impaired pharmacist, pharmacist-intern, or pharmacy technician, shall be immune from civil liability. This immunity from civil liability shall be liberally construed to accomplish the purpose of this section and is in addition to other immunity provided by law.

~~6. 3.~~ An employee or member of the board or a peer review committee or ~~intervenor~~ program member is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

~~7.~~ The board may contract with professional pharmaceutical associations or societies to provide a program for pharmacists, pharmacist-interns, and pharmacy technicians who are impaired by chemical abuse, chemical dependence, or mental or physical illness. Such programs shall include, but not be limited to, education, intervention,

and posttreatment monitoring. A contract with a professional pharmaceutical association or society shall include the following requirements:

~~a. Periodic reports to the board regarding education, intervention, and treatment activities.~~

~~b. Immediate notification to the board's executive secretary or director or the executive secretary's or director's designee of the identity of the pharmacist, pharmacist-intern, or pharmacy technician who is participating in a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians.~~

~~c. Release to the board's executive secretary or director or the executive secretary's or director's designee upon written request of all treatment records of a participant.~~

~~d. Quarterly reports to the board, by case number, regarding each participant's diagnosis, prognosis, and recommendations for continuing care, treatment, and supervision which maintain the anonymity of the participant.~~

~~e. Immediate reporting to the board of the name of an impaired pharmacist, pharmacist-intern, or pharmacy technician who the treatment organization believes to be an imminent danger to either the public or to the pharmacist, pharmacist-intern, or pharmacy technician.~~

~~f. Reporting to the board, as soon as possible, the name of a participant who refuses to cooperate with the program, who refuses to submit to treatment, or whose impairment is not substantially alleviated through intervention and treatment.~~

~~g. Immediate reporting to the board of the name of a participant where additional information is evident that known distribution of controlled substances or legend drugs to other individuals has taken place.~~

~~8.~~ 4. The board may add a surcharge of not more than ten percent of the applicable fee to a pharmacist license fee, pharmacist license renewal fee, pharmacist-intern registration fee, pharmacy technician registration fee, or pharmacy technician registration renewal fee authorized under this chapter to fund ~~programs~~ a program to aid ~~monitor~~ impaired pharmacists, pharmacist-interns, or pharmacy technicians.

~~9.~~ 5. The board may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to be used in ~~programs~~ a program authorized by this section. ~~The board may contract to provide funding on an annual basis to a professional pharmaceutical association or society for expenses incurred in management and operation of a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians. Documentation of the use of these funds shall be provided to the board not less than annually for review and comment.~~

~~10.~~ 6. Funds and surcharges collected under this section shall be deposited in an account and may be used by the board to administer ~~programs~~ a program authorized by this section, ~~including the provision of education, intervention, and posttreatment monitoring to an impaired pharmacist, pharmacist-intern, or pharmacy technician and to pay the administrative costs incurred by the board in connection with that funding and appropriate oversight,~~ but shall not be used for costs incurred for a participant's initial evaluation, referral services, treatment, or rehabilitation subsequent to intervention.

~~11.~~ 7. The board may disclose that the license of a pharmacist, the registration of a pharmacist-intern, or the registration of a pharmacy technician who is the subject of an order of the board that is confidential pursuant to ~~subsection 4~~ section 272C.6 is suspended, revoked, canceled, restricted, or retired; or that the pharmacist, pharmacist-

intern, or pharmacy technician is in any manner otherwise limited in the practice of pharmacy; or other relevant information pertaining to the pharmacist, pharmacist-intern, or pharmacy technician which the board deems appropriate.

~~42. 8.~~ The board may adopt rules necessary for the implementation of this section.

Section 6. Section 155A.43, Iowa Code 2016, is amended to read as follows:

155A.43 Pharmaceutical collection and disposal program — annual allocation.

Of the fees collected by the board pursuant to sections 124.301 and 147.80 and chapter 155A ~~by the board of pharmacy~~, and retained by the board pursuant to section 147.82, ~~not more than one hundred seventy-five thousand dollars may be allocated~~ the board may annually allocate a sum deemed by the board to be adequate for administering the pharmaceutical collection and disposal program ~~originally established pursuant to 2009 Iowa Acts, ch. 175, §9.~~ The program shall provide for the management and disposal of unused, excess, and expired pharmaceuticals including the management and disposal of controlled substances pursuant to state and federal regulations. The board of pharmacy may ~~cooperate~~ contract with the Iowa pharmacy association and ~~may consult with the department and sanitary landfill operators in administering~~ one or more vendors for the provision of supplies and services to manage and maintain the program and to safely and appropriately dispose of pharmaceuticals collected through the program.

EXPLANATION

The bill permits the board to recommend, subject to approval by the governor, a

pool of up to seven qualified individuals to serve as alternate board members to ensure the availability of an unbiased quorum of board members to hear a contested case. The bill identifies the maximum term for an alternate board member, provides that an individual who previously served on the board may serve as an alternate board member, provides for compensation when the alternate member serves on a hearing panel, establishes requirements for the composition of a hearing panel containing alternate board members, and provides that the decision of a hearing panel containing alternate board members is considered a final decision of the board.

The bill