The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 662
INTRODUCER:	Health Policy Committee
SUBJECT:	Nonresident Pharmacies
DATE:	March 10, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 662 requires a pharmacy located in another state (nonresident pharmacy) to obtain a nonresident pharmacy compounded sterile products permit prior to shipping, mailing, delivering, or dispensing a compounded sterile product into Florida. Any sterile compounded product that is sent into Florida must have been compounded in a manner that meets or exceeds the standards for sterile compounding.

The bill authorizes the Department of Health (department) or its agents to inspect any nonresident pharmacy that is registered with the department. The nonresident pharmacy is responsible for the cost of this inspection. The department is also authorized to take regulatory action against a nonresident pharmacy immediately, without waiting 180 days for the pharmacy's home state to act on alleged conduct that causes or could cause serious injury to a human or animal in this state.

The bill includes a sunset provision for the nonresident pharmacy compounded sterile products permit for October 1, 2018, unless reenacted by the Legislature.

The bill provides an effective date of July, 1 2014.

II. Present Situation:

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (the Act) found in ch. 465, F.S.[1] The Board of Pharmacy (the board) is created within the department to adopt rules to implement provisions of the Act and take other actions according to duties conferred on it in the Act.[2]

[1] Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.
[2] Section 465.005, F.S.

Several pharmacy types are specified in law and are required to be permitted or registered under the Act:

- Community pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.
- Institutional pharmacy – a location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medical drugs are compounded, dispensed, stored, or sold. The Act further classifies institutional pharmacies according to the type of facility or activities with respect to the handling of drugs within the facility.
- Nuclear pharmacy – a location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, excluding hospitals or the nuclear medicine facilities of such hospitals.
- Internet pharmacy – a location not otherwise permitted under the Act, whether within or outside the state, which uses the internet to communicate with or obtain information from consumers in this state in order to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state.
- Non-resident pharmacy – a location outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state.
- Special pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold if such location is not otherwise defined which provides miscellaneous specialized pharmacy service functions. Seven special pharmacy permits are established in rule.[3]

Nonresident pharmacy

Any pharmacy located outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state is required to be registered with the board as a nonresident pharmacy.[4] In order to register in this state, a nonresident pharmacy must submit an application fee of $255 and a certified application[5] that documents:

- The pharmacy maintains a valid, unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which the dispensing facility is located and from which the drugs are dispensed;
- The identity of the principal corporate officers and the pharmacist who serves as the prescription department manager as well as the criminal and disciplinary history of each;
- The pharmacy complies with lawful directions and requests for information from applicable regulatory bodies;
- The pharmacy department manager's licensure status;
- The most recent pharmacy inspection report; and
- The availability of the pharmacist and patient records for a minimum of 40 hours per week, 6 days a week.

[3] Rule 64B16-28.800, F.A.C., establishes the following special permits: Special-Parenteral and Enteral, Special-Closed System Pharmacy, Special-Non Resident (Mail Service), Special-End Stage Renal Disease, Special-Parenteral/Enteral Extended Scope, Special-ALF, and Special Sterile Compounding.

[4] Section 465.0156, F.S. However, the board may grant an exemption from the registration requirements to any nonresident pharmacy which confines its dispensing activity to isolated transactions. See s. 465.0156(2), F.S.

[5] *See* Board of Pharmacy, *Non-Resident Pharmacy Application and Information*, (Nov. 2012), *available at* http://www.floridaspharmacy.gov/Applications/app-non-resident-parmacy.pdf (last visited Dec. 16, 2013).

The board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy for:

- Failure to comply with Florida's drug substitution provisions in s. 465.025, F.S.;
- Failure to comply with the registration requirements;
- Advertising the services of a nonresident pharmacy which has not registered, knowing the advertisement will likely induce members of the public in this state to use the pharmacy to fill prescriptions; or
- Conduct which causes serious bodily injury or serious psychological injury to a resident of Florida if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to act within 180 days of the referral.

Pharmaceutical Compounding

Compounding is the professional act by a pharmacist or other practitioner authorized by law, employing the science or art of any branch of the profession of pharmacy, incorporating prescription or non-prescription ingredients to create a finished product for dispensing to a patient or for administration by a practitioner or the practitioner's agent.[6]

Historically and continuing today, a practitioner might prescribe a compounded preparation when a patient requires a different dosage form, such as turning a pill into a liquid for a patient who cannot swallow pills or into a lollipop or flavored medication for children; a different dosage strength, such as for an infant; or allergen-free medication. Compounding and dispensing in this manner is typically patient-specific. More recently, the practice of compounding medications has evolved and expanded to include compounding for office use. "Office use" means the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy.[7] Typically a drug compounded for office use is not prepared, labeled, and dispensed for a specific patient.

Under the board's rules, compounding includes the preparation of:

- Drugs or devices in anticipation of prescriptions based on routine, regularly observed prescribing patterns;
- Drugs or devices, pursuant to a prescription, which are not commercially available; or
- Commercially available products[8] from bulk when the prescribing practitioner has prescribed the compounded product on a per prescription basis and the patient has been made aware that the compounded product will be prepared by the pharmacist. The reconstitution of commercially available products pursuant to the manufacturer's guidelines is permissible without notice to the practitioner.

[6] *See* Rule 64B16-27.700, F.A.C.
[7] *Id.*
[8] The term "commercially available product" means any medicinal product that is legally distributed in Florida by a drug manufacturer or wholesaler. *See* Rule 64B16-27.700, F.A.C.

Compounded Products

Compounded products may be either sterile or non-sterile. A sterile preparation is defined in the board's rule[9] as any dosage form devoid of viable microorganisms, but does not include commercially manufactured products that do not require compounding prior to dispensing. Compounded sterile preparations include, but are not limited to:

- Injectables;
- Parenterals, including Total Parenteral Nutrition (TPN) solutions, parenteral analgesic drugs, parenteral antibiotics, parenteral antineoplastic agents, parenteral electrolytes, and parenteral vitamins;
- Irrigating fluids;
- Ophthalmic preparations; and
- Aqueous inhalant solutions for respiratory treatments.

The United States Pharmacopeia and the National Formulary (USP–NF) is a book containing standards for chemical and biological drug substances, dosage forms, and compounded preparations, excipients, medical devices, and dietary supplements. The federal Food Drug and Cosmetic Act (FDCA) designates the USP–NF as the official compendium for drugs marketed in the United States. A drug product in the U.S. market must conform to the USP–NF standards for strength, quality, purity, packaging, and labeling of medications to avoid possible charges of adulteration and misbranding.[10] The USP–NF has five chapters specifically related to pharmaceutical compounding, two of which are USP Chapter 795, which addresses compounding for non-sterile preparations, and USP Chapter 797, which addresses compounding for sterile preparations. In addition, USP Chapter 797 requires the use of other general chapters as well.

Safety concerns of compounded drugs

Compounded drugs can pose both direct and indirect health risks. Direct health risks may result from poor compounding practices. The compounded drugs may be sub- or super-potent, contaminated, or otherwise adulterated. Indirect health risks include the possibility that patients will use ineffective compounded drugs instead of FDA-approved drugs that have been shown to be safe and effective. Not all pharmacists have the same level of skills and equipment to safely compound certain medications, and some drugs may be inappropriate for compounding. In some cases, compounders may lack sufficient controls (e.g., equipment, training, testing, or facilities) to ensure product quality or to compound complex drugs like sterile or extended-release drugs.

In 2012, the federal Centers for Disease Control and Prevention (CDC), in collaboration with state and local health departments and the Food and Drug Administration (FDA), began investigating a multistate outbreak of fungal meningitis and other infections among patients who received contaminated preservative-free methylprednisolone acetate (MPA) steroid injections from the New England Compounding Center (NECC).[11] As of October 23, 2013, 751 cases were reported nationwide, with 64 deaths attributed to contaminated injectables compounded in the

[9] Rule 64B16-27.797, F.A.C.
[10] For additional information on the USP-NP see http://www.usp.org/usp-nf (last visited Dec. 17, 2013).
[11] The Centers for Disease Control and Prevention Multistate Fungal Meningitis Outbreak Investigation, available at: http://www.cdc.gov/hai/outbreaks/meningitis.html (last visited Dec. 27, 2013).

Massachusetts pharmacy.[12] Florida reported 25 cases, with seven deaths related to persons receiving the medications from the contaminated lots.

The FDA continues to inform the public about recalls, inspections, and regulatory enforcement action related to compounded medications.[13]

State and Federal Oversight of Compounded Medications

Until recently, the regulation of compounded medications was without clear guidelines or oversight responsibility by the FDA or state agencies.[14] The FDA traditionally regulated the manufacture of prescription drugs, which typically includes making drugs (preparation, deriving, compounding, propagation, processing, producing, or fabrication) on a large scale for marketing and distribution of the product for unidentified patients. State boards of pharmacy historically have regulated the compounding of medications by a pharmacy under the practice of pharmacy.[15] However, compounding standards, inspector competency, and inspection frequency and resources, if existent in the states, vary considerably.[16]

On November 27, 2013, President Obama signed the Drug Quality and Security Act (DQSA),[17] legislation to enhance the oversight of the compounding of human drugs. This law creates a new section 503B in the FDCA. Under section 503B, a compounder can become an "outsourcing facility." An outsourcing facility is not required to also be a state-licensed pharmacy. An outsourcing facility will be able to qualify for exemptions from the FDA approval requirements for new drugs and the requirement to label products with adequate directions for use. Outsourcing facilities:

- Must comply with current good manufacturing practices (CGMP) requirements;
- Will be inspected by FDA according to a risk-based schedule; and
- Must meet certain other conditions, such as reporting adverse events and providing FDA with certain information about the products they compound.

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[12] The Centers for Disease Control and Prevention, Multistate Fungal Meningitis Outbreak Investigation, *available at* http://www.cdc.gov/hai/outbreaks/meningitis-map-large.html#casecount_table (last visited Dec. 27, 2013).

[13] Federal Drug Administration, *Compounding: Inspections, Recalls, and other Actions,* (updated March 5, 2014) *available at* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339771.htm (last visited March 11, 2014).

[14]The U.S. Supreme Court had found certain provisions relating to the advertising and promotion of certain human compounded drugs in section 503A of the FDCA to be unconstitutional in 2002 and struck the entire section of law dealing with the remaining provisions related to compliance with current good manufacturing practices, labeling, and FDA approval prior to marketing. In subsequent opinions, lower courts split on whether the remaining provisions remained intact and enforceable. In some instances, the FDA was refused admittance to conduct an inspection of compounders, which necessitated obtaining an administrative warrant to gain access to the firm and make copies of the firm's records. *See* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm347722.htm (last visited Dec. 27, 2013).

[15] *See generally* U.S. Food and Drug Administration, Regulatory Guidance for Compounded Drugs, *available at* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited Dec, 27, 2013).

[16]House Democrats Release Report on Flawed Compounding Pharmacy Oversight, April 15, 2013, *available at* http://dingell.house.gov/press-release/house-democrats-release-report-flawed-compounding-pharmacy-oversight (last visited Dec. 27, 2013).

[17] H.R. 3204, 113th Congress.

This law provides that hospitals and other health care providers can lawfully provide their patients with drugs that were compounded in FDA registered outsourcing facilities that are subject to CGMP requirements and federal oversight.

A compounder that chooses not to register as an outsourcing facility and qualify for the exemptions under section 503B, may qualify for the exemptions under section 503A of the FDCA relating to traditional compounding for patient-specific medications. Otherwise, the compounder is subject to all of the requirements in the FDCA applicable to conventional manufacturers.

The FDA anticipates that state boards of pharmacy will continue their oversight and regulation of the practice of pharmacy, including traditional pharmacy compounding. The FDA has also indicated it intends to continue to cooperate with state authorities to address pharmacy compounding activities that may be in violation of the FDCA.[18]

In response to the nationwide fungal meningitis outbreak caused by contaminated compounded products, the Florida Board of Pharmacy to adopt Emergency Rule 64B16ER12-1, Florida Administrative Code. This Emergency Rule required all Florida licensed pharmacy permit holders, including non-residents, to complete a mandatory survey to inform the board of their compounding activities. The goal of this mandatory survey was to determine the scope of sterile and non-sterile compounding within Florida licensed pharmacies, whether physically located in or out-of-state. Of the 8,981 permitted pharmacies, 8,294 (92 percent) responded. The board published the compounding survey results noted below in January 2013.[19]

Results relating to non-sterile compounding facilities:

- 55 percent (4,494) compound non-sterile products; 9 percent (382) of these are nonresident pharmacies.
- 54 percent (4,380) compound non-sterile products pursuant to a patient-specific prescription; 9 percent (373) of these are nonresident pharmacies.
- 6 percent (459) compound non-sterile products in bulk; 81 percent (373) of these are nonresident pharmacies.
- 1 percent (119) compound non-sterile products in bulk for office use; 50 percent (59) of these are nonresident pharmacies.
- 5 percent (382) ship compounded non-sterile products to other states; 80 percent (307) of these are nonresident pharmacies.

Key results relating to sterile compounding facilities:

- 12 percent (946) compound sterile products; 32 percent (301) of these are nonresident pharmacies. Some of these in-state pharmacies may hold other permit types as well, such as an institutional permit or a special permit that authorizes compounding.
- 11 percent (913) compound sterile products pursuant to a patient-specific prescription; 32 percent (289) of these are nonresident pharmacies.

[18] *Supra*, 16.
[19] Florida Board of Pharmacy compounding Survey Report, (January 23, 2013) *available at* http://www.floridaspharmacy.gov/Forms/info-compounding-survey-report.pdf, (last visited March 11, 2014).

- 4 percent (348) compound sterile products in bulk and/or in bulk for office use; 45 percent (155) of these are nonresident pharmacies. Eighty-three of these 348 pharmacies (22 in-state and 61 nonresident) compound greater than 100 doses from a single batch.
- 4 percent (307) ship compounded sterile products to other states; 177 of these are nonresident pharmacies that ship sterile compounded products to Florida.

Effective September 23, 2013, the board adopted a rule requiring most pharmacies that engage or intend to engage in the preparation of sterile compounded products within the state to obtain a Special Sterile Compounding permit.[20] Pharmacies required to obtain this permit must compound sterile products in strict compliance with the standards set forth in board rules.[21] These rules address, among other things, compounding products for office use, including the quantity of the product that may be safely compounded for office use, execution of an agreement between the pharmacist and practitioner outlining responsibilities of the practitioner, and labeling. Compliance with additional standards based on the risk level for contamination in the practice of compounding sterile preparations is also required. The rule addressing standards of practice for compounding sterile preparations was first adopted in 2008 and amended in January of 2010. These standards apply to all sterile pharmaceuticals, regardless of the location of the patient, e.g., home, hospital, nursing home, hospice, or doctor's office.[22]

There is no statutory authority to require nonresident pharmacies to register or obtain a separate sterile compounding permit in Florida.

Compounding Pharmacy Accreditation

The Pharmacy Compounding Accreditation Board (PCAB) is a nationally recognized organization that issues a voluntary quality accreditation designation for the compounding industry. Founders of the organization include the American College of Apothecaries, National Community Pharmacists Association, American Pharmacists Association, National Alliance of State Pharmacy Associations, International Academy of Compounding Pharmacists, National Association of Boards of Pharmacy, National Home Infusion Association, and United States Pharmacopeia.

The PCAB accreditation means the pharmacy has independent, outside validation that it meets nationally accepted quality assurance, quality control, and quality improvement standards. In order to demonstrate compliance with PCAB standards and earn PCAB accreditation, pharmacies participate in an off-site and on-site evaluation process that includes: Verification by PCAB that the pharmacy is not on probation for issues related to compounding quality, public safety or controlled substances; verification that the pharmacy is properly licensed in each state it does business in; and an extensive on-site evaluation by a PCAB surveyor, all of whom are compounding pharmacists trained in evaluating compliance with PCAB's quality standards. For example, this evaluation includes:

- An assessment of the pharmacy's system for assuring and maintaining staff competency;
- A review of facilities and equipment;
- A review of records and procedures required to prepare quality compounded medications;

[20] Rule 64B16-28.100(8), F.A.C.
[21] Rules 64B16-27.797 and 64B16-27.700, F.A.C.
[22] Rule 64B16-27.700, F.A.C.

- A verification that the pharmacy uses ingredients from FDA registered and or licensed sources.
- A review of the pharmacy's program for testing compounded preparations.[23]

Currently, 187 pharmacies hold PCAB accreditation, 15 of which are located in Florida.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 465.0156, F.S., to authorize the department to take regulatory action against a nonresident pharmacy immediately, without waiting 180 days for the pharmacy's home state to act on alleged conduct that causes or could cause serious injury to a human or animal in this state. Authorized regulatory action is expanded to include conduct that could cause serious injury, without demonstrating that the conduct actually injured a person. Regulatory enforcement action may also occur for conduct that causes or could cause serious bodily injury to an animal in this state or for noncompliance with the requirements of the newly established nonresident pharmacy compounded sterile products permit.

Section 2 creates s. 465.0158, F.S., to establish the nonresident pharmacy compounded sterile products permit. A pharmacy located in another state is required to obtain a nonresident pharmacy compounded sterile products permit prior to shipping, mailing, delivering, or dispensing a compounded sterile product into Florida. This permit is a supplemental permit to registration as a nonresident pharmacy.

The bill allows a registered nonresident pharmacy to become permitted until January 31, 2015 while continuing to send compounded sterile products into this state, if the products meet or exceed the standards required in the bill. However, if a nonresident pharmacy is not registered by July 1, 2014, it must seek registration and obtain the nonresident pharmacy compounded sterile products permit prior to sending compounded sterile products to Florida.

Any sterile compounded product that is sent into this state must have been compounded in a manner that meets or exceeds the standards for sterile compounding in Florida. The owners, officers, and prescription department manager or pharmacist in charge must attest that he or she understands Florida's laws and rules governing sterile compounding and that any compounded sterile products sent into this state will comply with those standards, unless the board has granted an exemption due to conflicting standards where the nonresident pharmacy is located.

The department is required to notify the permittee when Florida's laws or rules for sterile compounding change. However, if notification does not occur, the permittee remains obligated to comply with Florida's standards.

The department is directed to schedule the biennial permit renewal concurrent with the nonresident pharmacy's biennial registration. The nonresident pharmacy registration expires on February 28th of odd years. The board is authorized to adopt in rule a permit fee that will not exceed $250.

[23] Pharmacy Compounding Accreditation Board, http://www.pcab.org/prescribers, (last visited March 11, 2014).
[24] Pharmacy Compounding Accreditation Board, *All Pharmacies, available at* http://www.pcab.org/pharmacy (last visited March 11, 2014).

Section 465.0158, F.S., which establishes the nonresident pharmacy compounded sterile products permit, will sunset on October 1, 2018, unless reenacted by the Legislature.

Section 3 amends s. 465.017, F.S., to authorize the department or its agents to inspect any nonresident pharmacy that is registered with the department. The nonresident pharmacy is responsible for the actual costs incurred by the department for this inspection.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

A biennial permit fee in an amount not to exceed $250 is authorized. According to the board's compounding survey results, 177 nonresident pharmacies ship sterile compounded products to Florida. If all of these nonresident pharmacies seek a permit to continue shipping sterile compounded products to Florida, the biennial revenue from the permit, plus the $5 unlicensed activity fee,[25] is estimated at $45,135.

B. Private Sector Impact:

SB 662 enhances the regulation of pharmacies that are located in other states and provide medication to persons in this state. These pharmacies that compound sterile products for patients in Florida may experience increased costs related to additional permit fees as discussed above and compliance with greater compounding practice standards, if the pharmacy is located in a state with lesser practice standards. All registered nonresident pharmacies may experience on-site inspections and regulatory enforcement for non-compliance with Florida-specific practice requirements.

Patients receiving compounded sterile products from other states might experience increased medication costs to offset any costs of compliance with safer compounding standards. The overall health care market might experience reduced utilization to the

[25] A $5 unlicensed activity fee is required by s. 456.065(3), F.S.

extent that adverse health consequences are minimized from safer compounded medications. The fiscal impact of these factors is indeterminate.

C. Government Sector Impact:

The department will incur additional costs related to rule adoption, permitting activities, and regulatory enforcement actions. An analysis from the department was not available; however, frequently the department indicates these costs can be absorbed within existing resources. Costs incurred for inspections of nonresident pharmacies will be reimbursed by the nonresident pharmacy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 465.0156 and 465.017
This bill creates section 465.0158 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.