

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 708

INTRODUCER: Rules Committee; Health Policy Committee; and Senator Hutson

SUBJECT: Automated Pharmacy Systems

DATE: February 27, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	<b>Fav/CS</b>
2.	Kraemer	Imhof	IT	<b>Favorable</b>
3.	Rossitto-Van Winkle	Phelps	RC	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 708 amends s. 465.0235, F.S., to permit a licensed community pharmacy to provide outpatient pharmacy services for the dispensing of medicinal drugs through the use of an automated pharmacy system (APS) located outside the community pharmacy if:

- The APS is under the supervision and control of the community pharmacy;
- The APS is located in an indoor environment area that increases patients' access to medicinal prescriptions, including, but not limited to:
  - Medical facilities;
  - Places of business where essential goods and commodities are sold;
  - Rural areas of the state;
  - Large employer workplaces; and
  - Locations where access to a community pharmacy is limited.
- The Board of Pharmacy (board) is notified of all locations of APSs, and any change;
- The APS has a mechanism that provides live, real-time patient counseling by a pharmacist;
- The APS does not contain any controlled substances;
- The community pharmacy maintains records of the drugs dispensed including specific information;
- The APS ensures confidentiality of personal health information; and
- The community pharmacy maintains written policies and procedures to ensure the proper, safe, and secure functioning of the APS.

The bill authorizes, rather than requires as under current law, the board to adopt rules governing a community pharmacy's use of an APS.

The bill provides an effective date of July 1, 2020.

## II. Present Situation:

### The Practice of Pharmacy

Pharmacy is the third largest health profession behind nursing and medicine.<sup>1</sup> The Board of Pharmacy (BOP), in conjunction with the Department of Health (DOH), regulates the practice of pharmacists and pharmacies pursuant to ch. 465, F.S.<sup>2</sup> There are seven types of pharmacies eligible for various operating permits issued by the DOH:

- Community pharmacy;
- Institutional pharmacy;<sup>3</sup>
- Nuclear pharmacy;<sup>4</sup>
- Special pharmacy;<sup>5</sup>
- Internet pharmacy;<sup>6</sup>
- Non-resident sterile compounding pharmacy;<sup>7</sup> and
- Special sterile compounding pharmacy.<sup>8</sup>

### Community Pharmacy

The term “community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.<sup>9</sup> A community pharmacy permit is required for every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.<sup>10</sup> Any person desiring a permit to operate a community pharmacy must

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<sup>1</sup> American Association of Colleges of Pharmacy, *About AACP*, available at <https://www.aacp.org/about-aacp> (last visited Jan. 25, 2020).

<sup>2</sup> Sections 465.004 and 465.005, F.S.

<sup>3</sup> See ss. 465.003(11)(a)2. and 465.019, F.S.

<sup>4</sup> The term “nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term “nuclear pharmacy” does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. See ss. 465.003(11)(a)3. and 465.0193, F.S.

<sup>5</sup> The term “special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection. See ss. 465.003(11)(a)4. and 465.0196, F.S.

<sup>6</sup> The term “internet pharmacy” includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. See ss. 465.003(11)(a)5. and 465.0197, F.S.

<sup>7</sup> The term “nonresident sterile compounding pharmacy” includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit See s. 465.0158, F.S.

<sup>8</sup> See Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2020). An outsourcing facility is considered a pharmacy and needs to hold a special sterile compounding permit if it engages in sterile compounding.

<sup>9</sup> See ss. 465.003(11)(a)1. and 465.018, F.S.

<sup>10</sup> Fla. Admin. Code R. 64B16-28.100(2) (2020).

apply to the DOH. If the BOP certifies that an application complies with the laws and the rules governing pharmacies, the DOH must issue the permit.

No permit shall be issued unless a licensed pharmacist is designated as the prescription department manager.<sup>11</sup> A registered pharmacist may not serve as the prescription department manager in more than one location unless approved by the BOP.<sup>12</sup> Permits issued by the DOH are not transferable.<sup>13</sup> Passing an on-site inspection is a prerequisite to the issuance of an initial permit or a permit for a change of location. The DOH must make the inspection within 90 days before issuance of the permit.<sup>14</sup>

The BOP may suspend or revoke the permit of, or may refuse to issue a permit to:

- Any person who has been disciplined or who has abandoned a permit or allowed a permit to become void after written notice that disciplinary proceedings had been or would be brought against the permit;
- Any person who is an officer, director, or person interested directly or indirectly in a person or business entity that has had a permit disciplined or abandoned or become void after written notice that disciplinary proceedings had been or would be brought against the permit; or
- Any person who is or has been an officer of a business entity, or who was interested directly or indirectly in a business entity, the permit of which has been disciplined or abandoned or become null and void after written notice that disciplinary proceedings had been or would be brought against the permit.<sup>15</sup>

A community pharmacy that dispenses controlled substances must maintain a record of all such dispensing, consistent with the requirements of s. 893.07, F.S., and must make the record available to the DOH or law enforcement agencies upon request.<sup>16</sup>

### **Pharmacist Licensure**

A person desiring to be licensed in Florida as a pharmacist must:<sup>17</sup>

- Complete an application and remit an examination fee;
- Be at least 18 years of age;
- Hold a degree from an accredited and approved school or college of pharmacy;<sup>18</sup>
- Have completed a board-approved internship; and
- Successfully complete the board-approved examination.

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<sup>11</sup> Section 465.018(2), F.S.

<sup>12</sup> Section 465.022(11)(c), F.S.

<sup>13</sup> Section 465.022(13), F.S.

<sup>14</sup> Section 465.018(6), F.S.

<sup>15</sup> Section 465.018(3), F.S.

<sup>16</sup> Section 465.018(7), F.S.

<sup>17</sup> Section 465.007, F.S. The DOH may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements set forth in law and rule. *See* s. 465.0075, F.S.

<sup>18</sup> If the applicant has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, the applicant must demonstrate proficiency in English, pass the board-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist. Section 465.007(1)(b)2., F.S.

A pharmacist must complete at least 30 hours of board-approved continuing education during each biennial renewal period.<sup>19</sup> Pharmacists who are certified to administer vaccines or epinephrine autoinjections must complete a three-hour continuing education course on the safe and effective administration of vaccines and epinephrine injections as a part of the biennial licensure renewal.<sup>20</sup> Pharmacists who administer long-acting antipsychotic medications must complete an approved eight-hour continuing education course as a part of the continuing education for biennial licensure renewal.<sup>21</sup>

### Pharmacist Scope of Practice

In Florida, the “practice of the profession of pharmacy” includes:<sup>22</sup>

- Compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of a medicinal drug;
- Consulting concerning therapeutic values and interactions of patent or proprietary preparations;
- Monitoring a patient’s drug therapy and assisting the patient in the management of his or her drug therapy, including the review of the patient’s drug therapy and communication with the patient’s prescribing health care provider or other persons specifically authorized by the patient, regarding the drug therapy;
- Transmitting information from prescribers to their patients;
- Administering vaccines to adults;<sup>23</sup>
- Administering epinephrine injections;<sup>24</sup>
- Administering antipsychotic medications by injection at the direction of a physician;<sup>25</sup> and
- Other pharmaceutical services.<sup>26</sup>

A pharmacist may not alter a prescriber’s directions, diagnose or treat any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, unless permitted by law.<sup>27</sup>

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<sup>19</sup> Section 465.009, F.S.

<sup>20</sup> Section 465.009(6), F.S.

<sup>21</sup> Section 465.1893, F.S.

<sup>22</sup> Section 465.003(13), F.S.

<sup>23</sup> See s. 465.189, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 465.1893, F.S.

<sup>26</sup> Section 465.003(13), F.S. The term “other pharmaceutical services” means the monitoring of the patient’s drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient’s drug therapy and communication with the patient’s prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider’s agent or such other persons as specifically authorized by the patient, regarding the drug therapy . . . The “practice of the profession of pharmacy” also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and shall expressly permit a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the profession of pharmacy also includes the administration of vaccines to adults. *Id.*

<sup>27</sup> *Supra* note 22.

### **Automated Pharmacy Systems (APS)**

An APS is a mechanical system that delivers prescription drugs from a Florida-licensed pharmacy and maintains related transaction information.<sup>28</sup> A mechanical pharmacy system performs operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medication, and collects, controls, and maintains all transaction information.<sup>29</sup>

Current Florida law<sup>30</sup> provides that a pharmacy may provide pharmacy services to a long-term care facility,<sup>31</sup> a hospice,<sup>32</sup> or a state correctional institution<sup>33</sup> through the use of an APS under the following parameters:

- The APS need not be located at the same location as the pharmacy.
- Drugs stored in bulk or unit of use in the APS are part of the inventory of the pharmacy providing the services, and drugs delivered by the APS are considered to have been dispensed by that pharmacy.
- The operation of the APS must be under the supervision of a Florida-licensed pharmacist. Such a supervisor need not be physically present at the site of the APS and may supervise the system electronically.
- The supervising pharmacist is required to develop and implement policies and procedures to verify that drugs delivered by the APS are accurate and valid and that the machine is properly restocked.
- The BOP is required to adopt rules governing APS use which must specify requirements for recordkeeping, security, and labeling. The labeling requirements must permit the use of unit-dose medications if the facility, hospice, or correctional institution maintains medication-administration records that include directions for use of the medication and if the APS identifies the dispensing pharmacy, the prescription number, the name of the patient, and the name of the prescribing practitioner.

Florida law does not currently provide for a pharmacy to provide pharmacy services via an APS in any venue other than a long-term care facility, hospice, or state correctional institution.

Under BOP rules, a community pharmacy may use an automated pharmacy system if:

- The APS is:

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<sup>28</sup> Section 465.003(17), F.S.

<sup>29</sup> Fla. Admin. Code R. 64B16-28.141(1)(a) (2020).

<sup>30</sup> See s. 465.0235, F.S.

<sup>31</sup> A “long-term care facility” means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility. Section 400.0060(6), F.S.

<sup>32</sup> Section 400.601(6), F.S., defines a “hospice residential unit” as a homelike living facility, and includes a facility licensed under chs. 395 or 429, F.S., that is operated by a hospice for the benefit of its patients and is considered by a patient who lives there to be his or her primary residence.

<sup>33</sup> A “state correctional institution” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections. See s. 944.02 (8), F.S.

- Located within the prescription department, adjacent to the prescription department, or is located on the establishment<sup>34</sup> of the licensed pharmacy, and its operation is under the supervision of a pharmacist.
- Not located within the prescription department but is operated as an extension of the licensed pharmacy.
- Not located within the prescription department but has the name, address, contact information, and permit number of the community pharmacy that is responsible for the operation of the automated pharmacy system conspicuously displayed on the automated pharmacy system.
- The pharmacy develops and maintains a policy and procedure manual.
- The APS ensures that each prescription is dispensed according to the definition of “dispense” found in s. 465.003, F.S., and as used in the practice of the profession of pharmacy. The system must include a mechanism to ensure that the patient has a means to communicate with a pharmacist responsible for dispensing the medical drug product, and the means of communication may include in-person, electronic, digital, or telephonic.
- The APS must maintain a readily retrievable electronic record to identify all pharmacists, pharmacy interns, registered pharmacy technicians, or other personnel involved in the dispensing of a prescription.
- The APS must provide the ability to comply with product recalls generated by the manufacturer, distributor, or pharmacy. The system must have a process in place to isolate affected lot numbers, including an intermix of drug product lot numbers.<sup>35</sup>

### III. Effect of Proposed Changes:

CS/CS/SB 708 amends s. 465.0235, F.S., to permit a licensed community pharmacy to provide outpatient pharmacy services for the dispensing of medicinal drugs through the use of an automated pharmacy system (APS) located outside the community pharmacy if:

- The APS is under the supervision and control of the community pharmacy;
- The APS is located in an indoor environment area that increases patients’ access to medicinal prescriptions, including, but not limited to:
  - Medical facilities;
  - Places of business where essential goods and commodities are sold;
  - Rural areas of the state;
  - Large employer workplaces; and
  - Locations where access to a community pharmacy is limited.
- The Board of Pharmacy (board) is notified of all locations of APSs, and any change;
- The APS has a mechanism that provides live, real time patient counseling by a pharmacist;
- The APS does not contain any controlled substances;
- The community pharmacy maintains records of the drugs dispensed including specific information;
- The APS ensures confidentiality of personal health information; and

<sup>34</sup> An “establishment” is one general physical location that may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. Fla. Admin. Code R. 64B16-28.141(1)(b) (2020).

<sup>35</sup> Fla. Admin. Code R. 64B16-28.141(2) (2020).

- The community pharmacy maintains written policies and procedures to ensure the proper, safe, and secure functioning of the APS.

The bill requires that medicinal drugs stored in bulk or unit of use in an automated pharmacy system servicing a long-term care facility, hospice, or correctional institution, or for outpatient dispensing, must be part of the inventory of the pharmacy providing pharmacy services to that facility, hospice, or institution, or for outpatient dispensing, and medicinal drugs delivered by the automated pharmacy system are considered to have been dispensed by that pharmacy.

The bill deletes the current-law requirement for the board to adopt rules governing the use of APSs and instead authorizes the board to adopt such rules. If adopted, such rules must include all of the following:

- Recordkeeping requirements;
- Security requirements; and
- Labeling requirements that permit the use of unit-dose medications for a facility, hospice, or institutions that maintains medication-administration records that include directions for use of the medication and the APS identifies all of the following:
  - The dispensing pharmacy;
  - The prescription number;
  - The name of the patient; and
  - The name of the prescribing practitioner.

The bill provides an effective date of July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

There may be an indeterminate cost, or a savings, to the public of having medicinal drugs readily available for dispensing through the use of an APS at locations inside a community pharmacy or inside the same establishment as a community pharmacy.

**C. Government Sector Impact:**

The DOH will experience a recurring increase in workload associated with the requirement for community pharmacies to notify the Board of Pharmacy of the location and any changes to the location of the automated pharmacy systems, yet it is anticipated that current resources are adequate to absorb such costs.<sup>36</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 465.0235 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on February 26, 2020:**

The CS:

- Eliminates the underlying bill's restriction that APSs must be located inside a community pharmacy department or inside the same establishment and instead allows an APS to be locate outside the community pharmacies at:
  - Medical facilities;
  - Places of business where essential goods and commodities are sold;
  - Rural areas of the state;
  - Large employer workplaces; and
  - Locations where access to a community pharmacy is limited.

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<sup>36</sup> The Department of Health, *Senate Bill 708 Agency Legislative Bill Analysis* (Nov. 13, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).



- Requires the community pharmacy to maintain written policies and procedures to ensure the proper, safe, and secure functioning of its APS.
- Authorizes, rather than requires, the Board of Pharmacy to adopt rules governing a community pharmacy's use of an APS.

**CS by Health Policy on January 14, 2020:**

The CS:

- Eliminates the authorization for the use of an APS not located at the same location as the community pharmacy;
- Adds the requirement that the automated pharmacy system be located either:
  - Inside the community pharmacy's pharmacy department; or
  - Inside the same establishment as the community pharmacy; and
- Mandates that an APS may not contain or dispense any controlled substances listed in s. 893.03, F.S., or 21 U.S.C. s. 812 and eliminates reference to schedules II through V for controlled substances.

**B. Amendments:**

None.