Blog Post

Florida Board of Pharmacy Adopts Emergency Rule Excusing Off-Site Consultant Pharmacists from Conducting Monthly Visits During COVID-19

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By Martin R. Dix

Like many states, Florida requires consultant pharmacists to conduct on-site monthly visits to the facilities to which they provide pharmacy services. The visits are required for Modified Class IIB Pharmacy Permits, Special ALF Pharmacy Permits, and Special ESRD Pharmacy Permits. Because of the COVID-19 pandemic, consultant pharmacists—particularly those visiting assisted living facilities—were concerned about off-site consultant pharmacists going from facility to facility and possibly increasing the risk of COVID-19 transmission to pharmacists, staff, and residents in the process.

The Board of Pharmacy heard the concerns with safeguarding the health of both pharmacists and the public during the COVID-19 pandemic and, respecting the implementation of the Division of Emergency Management's Order 20-006 prohibiting certain persons from visiting assisted living facilities, took immediate action. On March 19, 2020, the Board of Pharmacy adopted an emergency rule that relieves off-site consultant pharmacists from visiting the facilities. The rule was designed to allow some flexibility and does not prohibit the consultant pharmacist from visiting the facilities, so the facility

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and pharmacist may agree to pharmacist's visit in certain circumstances. The rule does not relieve on-site consultant pharmacists of the on-site visit requirement, so if the pharmacists were told to leave the facility, such pharmacists may need to seek relief in other ways, though we would expect the regulatory authorities to be reasonable in such situations.

THE FULL TEXT OF THE EMERGENCY RULE AS ADOPTED BY THE BOARD IS:

64B6-ER20-21, F.A.C. (64B16-28.501) Consultant Pharmacist of Record; Initial Designation; Change.

(1) through (4) No change.

(5) Off-site consultant pharmacists of record shall not be required to perform inspections and on-site consultations at permitted institutional pharmacies as referenced in Rules 64B16-28.501 F.A.C., Rules 64B16-28.702(2)(b) (c) and (d) F.A.C.' Rule 64B16-28.850(16) F.A.C. and Rules 64B16-28.870(3)(C) and (d) F.A.C. when the consultant pharmacist of record is not regularly present at the location. This rule shall in no way modify any obligations stemming from State or Federal laws requiring drug regimen reviews.

In order to adopt an emergency rule, an agency must find that there is an immediate danger to the public health, safety, or welfare that requires emergency action, and then the agency may adopt any rule necessitated by the immediate danger. An emergency rule lasts for 90 days and, while subject to challenge, a challenge does not prevent the emergency rule's implementation. The rule cannot be readopted after 90 days unless the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

- A challenge to the proposed rules has been filed and remains pending; or

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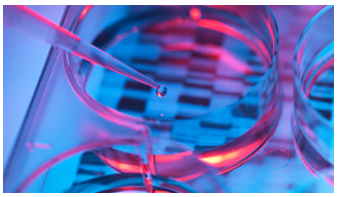

- The proposed rules are awaiting ratification by the Legislature pursuant to s. 541(3).

The Board of Pharmacy Draft Meeting Minutes for the March 19, 2020, meeting regarding the emergency rule are available here.

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