



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

December 9, 2022

The Honorable Seung Oh, President
California State Board of Pharmacy
2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Re: Proposal to Amend Business & Professions Code Sec. 4113.5 Related to Pharmacy Staffing

Dear President Oh:

The California Retailers Association (CRA) and National Association of Chain Drug Stores (NACDS) are writing to express concerns with the Medication Error Reduction and Workforce Ad Hoc Committee's proposed statutory proposal to amend Business & Professions Code Section 4113.5 related to pharmacy staffing.

Our members appreciate the goals of the Medication Error Reduction and Workforce Ad Hoc Committee to reduce medication errors and find ways to improve pharmacy working conditions. While we are supportive of these goals, we do not believe the proposal to establish a staffing floor by requiring a technician or clerk to be on site at the pharmacy all times is the appropriate solution. It will result in pharmacy closures across the state, which will be hugely detrimental to Californians who rely on their community pharmacies for medications, testing, vaccines and other critical healthcare services.

Risk of Pharmacy Closures & Reduced Access to Healthcare Services

Although we acknowledge the benefits of having additional non-pharmacist staff in the pharmacy, there are often unforeseen circumstances, out of the pharmacy's control, that make this impossible. For example, under this proposal, if there is only one technician working in the pharmacy and that technician calls in sick or is unable to make it to work on any given day, the pharmacy would have to close. Alternatively, a pharmacy technician may resign their employment, leaving the pharmacy without the staff necessary to remain open until a replacement is hired. We believe this is antithetical to the Board's role of consumer protection because pharmacy closures will result in reduced access to critical medications and healthcare services for consumers. What if the pharmacy is located in a rural area and is the only place where a patient can access an emergency medication? If that pharmacy closes, that patient will be forced to go without their medication and potentially rely on the Emergency Department for care, which will cause a significant financial strain on our healthcare system.

In addition, this proposal gives a pharmacist the authority to close a pharmacy if that pharmacist feels, in their opinion, that staffing is insufficient to fill prescriptions or provide other services to patients. This is incredibly arbitrary and does not take into consideration the subjectivity of pharmacists. For example, a pharmacist may decide that four additional pharmacists are needed to fill prescriptions or provide immunizations. This request would be impossible for a pharmacy to meet and would, again, result in the pharmacy closing.

Reduction in Pharmacy Hours

Even in the instances when this proposal does not result in temporary permanent pharmacy closures, it will almost certainly lead to a reduction in pharmacy hours due to the circumstances outlined above. Many pharmacies will be unable to remain open 24-hours and will likely close overnight. Weekend hours could be impacted, and stores will likely be forced to open their doors later and close to the public earlier every day. In addition to the negative impact to patients' access to medications and other pharmacy services, this will increase workload burden for pharmacy teams as workflow is impacted and could harm pharmacists and other pharmacy employees by eliminating available work hours.

Less Timely Access to Prescriptions

Beyond the staffing components, this proposal prohibits pharmacies from "establishing policies and procedures related to time guarantees to fill prescriptions within a specified time unless such guarantees are required by law or to meet contractual requirements." This is duplicative and unnecessary given that California enacted SB 362 in 2020 which prohibits chain pharmacies from establishing quotas to measure or evaluate a pharmacist's or pharmacy technician's performance. In addition to being duplicative, this provision will put significant constraints on the ability of pharmacies to ensure patients are able to obtain their prescriptions in a timely manner. Quotas are prohibited but pharmacies must be able to utilize tools that assist with patient satisfaction and timely access to pharmacy services.

No Consideration for Circumstances Beyond a Pharmacy's Control

While we appreciate the intent of the Committee's proposal, it will reduce access to pharmacy services and could ultimately result in permanent pharmacy closures. We respectfully ask the Board of Pharmacy to take these facts into consideration, particularly the harm it will cause patients. At a minimum, this proposal should be amended to include flexibility to ensure pharmacies can remain open to the public and ensure patients maintain access to healthcare services. The language could look similar to the Board's recent Community Pharmacy Staffing Regulation as follows:

4113.5. Community Pharmacies: Required Staffing

(d)The board shall not take action against a pharmacy for a violation of this section if both of the following apply:

(1)Another employee is unavailable to assist the pharmacist due to reasonably unanticipated circumstances, including, but not limited to, illness, injury, family emergency, or the employee's termination or resignation.

(2)The pharmacy takes all reasonable action to make another employee available to assist the pharmacist.

Although this proposal applies arbitrarily only to community pharmacies, staffing shortages are plaguing almost every industry in California, including multiple pharmacy sectors. Our members have implemented a number of programs to recruit pharmacists and pharmacy employees, including offering generous signing bonuses and other incentives. Our members are also committed to mitigating working condition pressure for their existing workforce and have undertaken a number of efforts to assist pharmacists and pharmacy employees. These include robust training, bringing on additional employees for vaccinations, adjusting hours of operation, cross training front-store employees to assist in the pharmacy, as well as salary increases, bonuses, and social services for employees. We support these types of solutions to assist with pharmacy workflow, but we cannot support proposals that will result in pharmacy closures and harm to patients.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, online marketplaces, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware, and home stores. Our members include national chains as well as independent retailers from across California. California retail is the state's largest industry, operating in over 505,000 retail stores which accounts for over 25 percent of California's jobs with a combined \$542 billion on the state's GDP.

The National Association of Chain Drug Stores represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate over 40,000 pharmacies, and NACDS' member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 900 supplier partners and over 70 international members representing 21 countries. Please visit NACDS.org.

We would be happy to work with you on solutions to this issue to ensure pharmacies are able to remain open to their patients while reducing medication errors. Please do not hesitate to contact Jennifer Snyder or Lindsay Gullahorn with Capitol Advocacy at jsnyder@capitoladvocacy.com or lgullahorn@capitoladvocacy.com if you have any questions.

Sincerely,



Rachel Michelin
President & CEO
California Retailers Association



Steve C. Anderson, FASAE, CAE, IOM
President & Chief Executive Officer
National Association of Chain Drug Stores

cc: Anne Sodergren, Executive Officer, Board of Pharmacy