HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 Practice of Pharmacy
SPONSOR(S): Peters and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1180, HB 981

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Langston	O'Callaghan
2) Business & Professions Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Compounding is a practice in which a licensed pharmacist, or other legally permitted individual, combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient when the health needs of that patient cannot be met by a medication approved by the U.S. Food and Drug Administration.

The bill amends s. 465.003, F.S., to define the term “office use compounding” as the provision and administration of a compounded drug to a patient by a practitioner in the practitioner’s office or other treatment setting. In the context of veterinary drugs, the bill expands the definition to include compounding for a veterinarian to dispense to the owner or caretaker of the animal patient.

The bill states that nothing in ch. 465, F.S., or the rules adopted under it prevent a veterinarian from dispensing a compounded drug to an animal patient or its owner or caretaker.

The bill conforms many cross references to the changes made by the bill.

There is an insignificant negative fiscal impact to the Board of Pharmacy within the Department of Health, which can be absorbed within current resources. There is no fiscal impact to local governments.

The bill provides for an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Compounding

Compounding is a traditional component of the practice of pharmacy, and is taught as part of the standard curriculum at most pharmacy schools.[1] It is a practice in which a licensed pharmacist, or other legally permitted individual, combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient when the health needs of that patient cannot be met by a medication approved by the U.S. Food and Drug Administration (FDA).[2] For example, compounding could be necessary when a patient with an allergy needs a medication to be made without a certain dye or an elderly patient or a child is unable to swallow a pill and needs a medicine in a liquid form that is not otherwise available.[3]

Compounded drugs are not FDA-approved; this means that the FDA does not verify the safety, or effectiveness of compounded drugs and these drugs lack an FDA finding of manufacturing quality before such drugs are marketed.[4] However, federal rules currently require that compounded medications only be modified versions of FDA-approved medications. In other words, compounded medications should only be prepared using FDA-approved drugs that have been crushed, had a flavor added, or otherwise changed from the original form.[5]

Safety Concerns of Compounded Drugs

Compounded drugs can pose both direct and indirect health risks. [6] Compounded drugs may be unsafe and pose direct health risks because of the use of poor quality compounding practices; they may be sub- or super-potent, contaminated, or otherwise adulterated.[7] Some pharmacists are well-trained and well-equipped to compound certain medications safely, but not all pharmacists have the same level of skills and equipment, and some drugs may be inappropriate for compounding.[8] However, in other 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.[9]

2012 Meningitis Outbreak

In 2012, the federal Centers for Disease Control and Prevention, in collaboration with state and local health departments and the FDA, began investigating a multistate outbreak of fungal meningitis and other infections among patients who received contaminated preservative-free methylprednisolone acetate steroid injections from the New England Compounding Center.[10] In total, 751 people in 20

[1] *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 361 (2002)
[2] U.S. Food and Drug Administration, Compounding and the FDA: Questions and Answers, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited March 13, 2015).
[3] Id.
[4] Id.
[5] American Veterinary Medical Association, Compounding: FAQ for Pet Ownershttps://www.avma.org/KB/Resources/FAQs/Pages/Compounding-FAQ-for-Pet-Owners.aspx (last visited March 13, 2015).
[6] The Law of Compounding Medications And Drugs, FDA Question and Answers Regarding Compounded Memopausal Hormone Therapy, http://www.lawofcompoundingmedications.com/2012/08/fda-question-and-answers-regarding.html (last visited March 14, 2015).
[7] Id.
[8] Id.
[9] Id.
[10] Centers for Disease Control and Prevention, Multistate Outbreak for Fungal Meningitis and Other Infections, http://www.cdc.gov/hai/outbreaks/meningitis.html (last visited March 13, 2015).

states were sickened by the contaminated MPA injections, including 25 Floridians.[11] Of the 751 people infected, 64 people died and 7 of those deaths were in Florida.

Animal Deaths from Compounding

The most widely covered incidents relating to compounding in veterinary medicine in Florida involved horses. In 2009, 21 polo horses died at the United States Open Polo Championship in Florida as the result of a mathematical error by the compounding pharmacy that altered the strength of an ingredient in a medication given to the horses.[12] Another incident occurred in 2014, when eight Florida horses and two from Kentucky were sickened from a compounded drug.[13] Both of the horses from Kentucky and two of the eight horses from Florida died or had to be euthanized; the six remaining horses in Florida suffered neurological problems.[14]

Federal and State Oversight of Compounded Medications

Until recently, the regulation of compounded medications was murky, without clear guidelines and oversight responsibility by the FDA or state agencies.[15]

The FDA has 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.[16] The FDA states that, generally, state boards of pharmacy will continue to have primary responsibility for oversight and regulation of the practice of pharmacy, including traditional pharmacy compounding, [17] although the FDA retains some authority over their operations through Drug Quality and Security Act (DQSA) and the Food, Drug, and Cosmetic Act (FDCA).[18] The FDA has indicated its intention to continue to cooperate with state authorities to address pharmacy compounding activities that may violate the FDCA.[19]

The DQSA, enacted in November 2013, contains provisions relating to the oversight of compounding. Title I of the DQSA, titled the "Compounding Quality Act," describes the conditions[20] under which certain compounded human drug products are entitled to exemptions from three sections of the FDCA requiring:

- Compliance with current good manufacturing practices (cGMP);[21]
- Labeling with adequate directions for use;[22] and
- FDA approval prior to marketing of the drug.[23]

[11] Centers for Disease Control and Prevention, Cases and Deaths with Fungal Infections Linked to Steroid Injections, available at http://www.cdc.gov/hai/outbreaks/meningitis-map-large.html (last visited March 13, 2015).
[12] Katie Thomas, *Polo Ponies Were Given Incorrect* Medication, NEW YORK Times, April 23, 2009, *available at* http://www.nytimes.com/2009/04/24/sports/othersports/24polo.html
[13] Carlos E. Medina, *Report: 2 thoroughbreds in Ocala, 2 in Kentucky die after being given compounded drug*, THE GAINESVILLE SUN, May 18, 2014, *available at* http://www.gainesville.com/article/20140518/ARTICLES/140519684.
[14] Id.
[15] In 2002, the U.S. Supreme Court found certain provisions relating to compounded drugs in section 503A of the FDCA to be unconstitutional 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. Later, in 2010, the Middle District of Florida ruled the FDA overstepped its authority when it tried to stop a Florida pharmacy from making compound prescription drugs for animals, stating that compounding is a "long-standing, widespread, state-regulated practice" that the FDA does not have the authority to regulate.
[16] U.S. Food and Drug Administration, Compounding and the FDA: Questions and Answers, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited March 13, 2015).
[17] Id.
[18] U.S. Food and Drug Administration, Compounding – Compounding Quality Act http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm (last visited March 13, 2015)
[19] U.S. Department of Health and Human Services Food and Drug Administration Center for Drug Evaluation and Research (CDER), Guidance – Pharmacy Compounding of Human Drug Products Under Sectaion 503A of the Federal Food, Drug, and Cosmetic Act, July 214, *available at* http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM377052.pdf
[20] FDCA, s. 503(A), 21 U.S.C. § 353a (2014).
[21] FDCA, s. 501(a)(2)(B)
[22] FDCA, s. 502(f)(1)

In addition, the new law permits a pharmacy or non-pharmacy engaged in compounding to voluntarily register as an "outsourcing facility."[24] An outsourcing facility may qualify for exemptions from the FDA approval requirements and the requirement to label products with adequate directions for use, but not the exemption from current good manufacturing practices (cGMP) requirements. Outsourcing facilities:

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

Florida Regulation of Compounded Medicine

Compounding Definition

Compounding is defined in s. 465.003(18), F.S., as the combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product.

The Florida Administrative Code defines compounding as 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 ingredients to create a finished product for dispensing to a patient, or for administration by a practitioner or the practitioner's agent. [25] This definition also specifically includes the professional act of preparing a unique finished product containing any ingredient or device and the preparation of:

- Drugs or devices in anticipation of prescriptions based on routine, regularly observed prescribing patterns.
- Drugs or devices which are not commercially available, pursuant to a prescription.
- Commercially available products 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.[26]

Office Use Compounding Definition

There is currently no definition of "office use compounding" in the Florida Statutes, however, the Florida Administrative Code defines office use compounding as 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.[27]

Dispensing of Compounded Drugs

Section 465.0276, F.S., provides that only a licensed pharmacist, or other person authorized under ch. 465, F.S., or a practitioner authorized by law, may dispense medicinal drugs. Dispensing is defined as the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent.[28] Dispensing is broader than administration. Administration is defined as obtaining and giving a single dose of medicinal drug by a legally authorized person to a patient for his or her consumption.[29]

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[23] FDCA, s. 505
[24] FDCA, s. 503(B)
[25] Rule 64B16-27.700, F.A.C.
[26] Rule 64B16-27.700(1), F.A.C.
[27] Rule 64B16-27.700(3), F.A.C.
[28] s. 465.033(6), F.S.
[29] s. 465.003(1), F.S.

There are additional limits placed on someone who dispenses compounded drugs for human consumption in Rule 64B16-27.700, F.A.C. Under this rule, a pharmacist may dispense and deliver a quantity of a compounded drug to a practitioner for "office use" by the practitioner provided, among other things, that:

- The quantity of compounded drug does not exceed the amount a practitioner anticipates may be used in the practitioner's office before the expiration date of the drug.
- The quantity of compounded drug is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice.
- The quantity of compounded drug for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.
- The pharmacy and the practitioner enter into a written agreement that prohibits dispensing, requires certain record keeping, and requires adverse incident reporting.
- The pharmacy maintains readily retrievable records of all compounded drugs ordered by practitioners for office use, which must be maintained for a minimum of four (4) years.
- The pharmacy affixes a label to any compounded drug that is provided for office use.
- In the case of compounded sterile products intended for human use, the pharmacy must be in full compliance with 21 U.S.C. § 353b, including being registered as an Outsourcing Facility.[30]

Compounding in Veterinary Medicine

The American Veterinary Medical Association (AVMA) states that the use of compounded medications offers myriad benefits to veterinarians, particularly when dealing with animals that require very small or very large doses of a particular medication or for which the traditional route of administration might not be optimal or even feasible.[31] Compounding is usually necessary when an animal is suffering from a medical condition and there is no FDA-approved human or veterinary product available and medically appropriate to treat the patient.[32] In some situations veterinarians may find it necessary to compound from a source that has not been approved by the FDA to relieve the animal's suffering, in these cases, veterinarians and pharmacists must carefully assess whether the use is consistent with state and federal law and FDA policy.[33]

The AVMA notes that while the benefits of compounded medications for animals are not readily apparent, because compounding may impact the absorption and depletion of a drug resulting in drug concentrations that are above or below the therapeutic range, it is an essential tool that provides therapeutic flexibility for difficult or irregular cases.[34] However, the AVMA cautions that compounded medications should be used judiciously.[35]

The FDA has issued a Compliance Policy Guide (CPG) section 608.400 entitled "Compounding of Drugs for Use in Animals" (61 FR 34849), to provide guidance to FDA's field and headquarters staff with regard to the compounding of animal drugs by veterinarians and pharmacists for use in animals. The FDCA does not distinguish compounding from manufacturing or other processing of drugs for use in animals; however the DQSA does not apply to animals.

Florida Regulation of Veterinarians

[30] Rule 64B16-27.700(3)
[31] Michael J, White, *Unraveling the confounding world of Compounding*, JAVMANEWS, February 13, 2013, *available at* https://www.avma.org/News/JAVMANews/Pages/130301o.aspx
[32] Id.
[33] Id.
[34] Id.
[35] Id.

Veterinarians are not regulated by the Department of Health as health care practitioners recognized under ch. 456, F.S., rather, they are licensed and regulated under the Board of Veterinary Medicine[36] under the Department of Business and Professional Regulation (DBPR).[37]

As part of the practice of veterinary medicine, veterinarians are authorized to prescribe, dispense, and administering drugs or medicine to their animal patients.[38] Veterinarians who dispense medications from an office are subject to regulation and inspection by DBPR.[39]

Compounded drugs for animals are not addressed in the Veterinary Medical Practice Act, ch. 474, F.S., nor are they addressed in DBPR's rules regulating veterinarians.

Effect of Proposed Changes

Office Use Compounding

The bill amends s. 465.003, F.S., to define the term "office use compounding." Office use compounding is defined as the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or other treatment setting. In the context of veterinary drugs, the bill expands the definition to include compounding for a veterinarian to dispense to the owner or caretaker of the animal patient. The bill does not define the term "provision."

The bill's authorization of office use compounding for "provision and administration" of compounded drugs for human consumption is inconsistent with the Board of Pharmacy's current rule, which permits "dispensing" under limited parameters. If a rule and statute conflict, the statute controls.[40] The conflicting provision in the bill would have the effect of superseding the existing rule and removing the required circumstances under which a compounded drug may be dispensed in Rule 64B16-27.700(3), F.A.C. Additionally, the bill's language for dispensing of compounded veterinary medical drugs would affect the rule. The bill authorizes a veterinarian to dispense compounded drugs to the animal's owner or caretaker, whereas the rule authorizes a pharmacist to dispense compounded drugs to a practitioner in certain circumstances. The bill language would expand who may dispense and to whom.

Because the definition provided in the bill is inconsistent with the current definition provided by the Florida Administrative Code, the Board of Pharmacy would be required to amend Rule 64B16-27.700, F.A.C., to be consistent with the bill's definition of office use compounding.[41]

Dispensing Practitioners

The bill amends s. 465.0276, F.S., to clarify the impact of ch. 465, F.S., and the rules adopted under the chapter on veterinarian dispensing of compounded drugs. Specifically, the bill states that nothing in ch. 465, F.S., or the rules adopted under it prevent a veterinarian from dispensing a compounded drug to an animal patient or its owner or caretaker. As discussed above, this would have the effect of superseding any rules on this issue.

The Department of Health notes that pharmacists may be unwilling to continue dispensing compounded drugs to veterinarians if those compounded drugs are going to be dispensed or sold by the veterinarians.[42]

The act will take effect July 1, 2015.

[36] s. 474.204, F.S.
[37] ch. 61G18, F.A.C.
[38] s. 474.202(9), F.S.
[39] Florida Dep't of Health, *2015 Agency Legislative Bill Analysis SB 1180*, February 27, 2015 (SB 1180 is identical to HB 1049) (on file with committee staff).
[40] *One Beacon Ins. v. Agency for Health Care Admin.*, 958 So. 2d 1127, 1129 (Fla. 1st DCA 2007) ("In the case of conflict, a statute takes precedence over an administrative rule.")
[41] Florida Dep't of Health, *2015 Agency Legislative Bill Analysis SB 1180*, February 27, 2015 (SB 1180 is identical to HB 1049) (on file with committee staff).
[42] Id.

B. SECTION DIRECTORY:

Section 1: Amends s. 465.003, F.S., relating to definitions.
Section 2: Amends s. 465.0276, F.S., relating to dispensing practitioners.
Section 3: Amends s. 409.9201, F.S., relating to Medicaid fraud.
Section 4: Amends s. 458.331, F.S., relating to grounds for disciplinary action; action by the board and department.
Section 5: Amends s. 459.015, F.S., relating to grounds for disciplinary action; action by the board and department.
Section 6: Amends s. 465.014, F.S., relating to pharmacy technicians.
Section 7: Amends s. 465.015, F.S., relating to violations and penalties.
Section 8: Amends s. 465.0156, F.S., relating to registration of nonresident pharmacies.
Section 9: Amends s. 465.016, F.S., relating to disciplinary actions.
Section 10: Amends s. 465.0197, F.S., relating to internet pharmacy permits.
Section 11: Amends s.465.022, F.S., relating to pharmacies; general requirements; fees.
Section 12: Amends s. 465.023 F.S., relating to pharmacy permitees; disciplinary action.
Section 13: Amends s. 465.1901, F.S., relating to the practice of orthotics and pedorthotics.
Section 14: Amends s. 499.003, F.S., relating to definitions of terms used in this part.
Section 15: Amends s. 893.02, F.S., relating to definitions.
Section 16: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There is an insignificant negative fiscal impact on the Board of Pharmacy associated with rulemaking requirements. These costs are non-recurring and will be absorbed within current resources.[43]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If enacted, the bill would preempt Rule 64B16-27.700, F.A.C., and its definition of “office use compounding.” Additionally, the criteria established in the rule for a pharmacist to dispense certain quantities of compounded drugs to a practitioner for office use compounding may be preempted. This could potentially allow pharmacists to dispense any amount of compounded drugs requested by a practitioner.

D. FISCAL COMMENTS:

None.

[43] Id.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES