



City of Chicago



SO2017-979

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	2/22/2017
Sponsor(s):	Burke (14) Hairston (5)
Type:	Ordinance
Title:	Amendment of Municipal Code Title 7 by creating new Chapter 7-25 entitled "Pharmacy Work Rules Ordinance"
Committee(s) Assignment:	Committee on Finance

SUBSTITUTE
ORDINANCE

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the *Chicago Tribune* conducted an investigation between 2015 and 2017 and found that 52% of 255 pharmacies tested in the Chicago region failed to warn patients about prescriptions for potential drug interactions that could be harmful or fatal; and

WHEREAS, the field of pharmacy is growing as ten percent (10%) of people take five (5) or more types of drugs, which is twice the percentage reported in 1994; and

WHEREAS, pharmacists are being asked to handle about thirty (30) prescriptions per hour, giving them two minutes to fill a prescription, counsel the patient, and check for potential drug interactions; and

WHEREAS, when filling prescriptions, a pharmacist has the primary duty to detect potential drug interactions, warn patients, and prevent harm and all other duties should be secondary to the pledge they made to do no harm; and

WHEREAS, according to a report in the *Journal of the American Medical Association*, dangerous drug combinations are a major public health problem, injuring over 1.3 million people each year, and causing the death of nearly 100,000 people – making such reactions one of the six leading causes of death in the United States; and

WHEREAS, the Institute for Safe Medication Practices estimated thirty (30) to fifty (50) million prescriptions are filled incorrectly each year, totaling two percent (2%) of the four (4) billion prescriptions filled annually; and

WHEREAS, in 2013, the Institute for Safe Medicine Practices conducted a survey of 673 pharmacists revealing that 83% believed distractions due to performance metrics or measured wait times contributed to dispensing errors and that 49% felt specific time measurements were a significant contributing factor; and

WHEREAS, performance metrics, which measure the speed and efficiency of prescription work flow by such parameters as prescription wait times, percentage of prescriptions filled within a specified time period, number of prescriptions verified, and number of immunizations given per pharmacist shift, may distract pharmacists and impair their professional judgment; and

WHEREAS, the current practice of using performance metrics or quotas to measure pharmacists' performance causes distractions that could potentially decrease pharmacists' ability to perform drug utilization reviews, answer patients' questions, and maintain attention to details, which could ultimately lead to unsafe conditions in the pharmacy; and

WHEREAS, pharmacists are challenged by demands of access, safety, and quality, and these challenges are amplified by the use of performance metrics that cause more errors, therefore, new or additional paradigms of care must be implemented to reduce these burdens and ensure the safety of consumers across Chicago; and

WHEREAS, Chicago is a city of 2.7 million residents making it the most populous city in the State of Illinois and, correspondingly, a concentrated market for pharmacy practices; and

WHEREAS, the Chicago City Council has an opportunity to ensure that the important role of a pharmacist and pharmacy technician is understood and respected by giving them the same rights and privileges we have fought so hard to offer to the millions of others employed within the boundaries of our great city; and

WHEREAS, in doing so, we also ensure the safety of the patients and consumers of the prescription drugs the pharmacists and pharmacy technicians are dispensing which is of the utmost importance to this legislative body, which remains steadfast in its commitment to sound business practices, public health, and consumer protection; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated herein and made part hereof as though fully set forth herein.

SECTION 2. Title 7 of the Municipal Code of Chicago is hereby amended by creating a new Chapter 7-25 and inserting the language as follows:

7-25-010. Short Title.

This section shall be cited as the "Chicago Pharmacy Work Rules Ordinance."

7-25-015. Definitions.

For purposes of this Chapter, the following definitions apply:

(a) "Hospital," has the meaning set forth in the Hospital Licensing Act, 210 ILCS 85 et seq., and the University of Illinois Hospital Act, 110 ILCS 30 et seq., on the effective date of this Chapter and as thereafter amended. At the time of passage of this ordinance, this term means any institution, place, building, buildings on a campus, or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of two (2) or more unrelated persons admitted for overnight

stay or longer in order to obtain medical, including obstetric, psychiatric and nursing, care of illness, disease, injury, infirmity, or deformity.

(b) "Hospital affiliate," has the meaning set forth in the Hospital Licensing Act, 210 ILCS 85 et seq., on the effective date of this Chapter and as thereafter amended. At the time of passage of this ordinance, this term means a corporation, partnership, joint venture, limited liability company, or similar organization, other than a hospital, that is devoted primarily to the provision, management, or support of health care services and that directly or indirectly controls, is controlled by, or is under common control of the hospital. "Control" means having at least an equal or a majority ownership or membership interest. A hospital affiliate shall be 100% owned or controlled by any combination of hospitals, their parent corporations, or physicians licensed to practice medicine in all its branches in Illinois. "Hospital affiliate" does not include a health maintenance organization regulated under the Health Maintenance Organization Act.

(c) "Pharmacist," has the meaning set forth in the Pharmacy Practice Act, 225 ILCS 85 et seq., on the effective date of this Chapter and as thereafter amended. At the time of passage of this ordinance, this term means a person licensed to engage in Pharmacy.

(d) "Pharmacy" or "drugstore," have the meanings set forth in the Pharmacy Practice Act, 225 ILCS 85 et seq., on the effective date of this Chapter and as thereafter amended. At the time of passage of this ordinance, this term means and includes every store, shop, pharmacy department, or other place where pharmacist care is provided by a pharmacist (1) where drugs, medicines, or poisons are dispensed, sold or offered for sale at retail, or displayed for sale at retail; or (2) where prescriptions of physicians, dentists, advanced practice nurses, physician assistants, veterinarians, podiatric physicians, or optometrists, within the limits of their licenses, are compounded, filled, or dispensed; or (3) which has upon it or displayed within it, or affixed to or used in connection with it, a sign bearing the word or words "Pharmacist," "Druggist," "Pharmacy," "Pharmaceutical Care," "Apothecary," "Drugstore," "Medicine Store," "Prescriptions," "Drugs," "Dispensary," "Medicines," or any word or words of similar or like import, either in the English language or any other language; or (4) where the characteristic prescription sign "Rx" or similar design is exhibited; or (5) any store, or shop, or other place with respect to which any of the above words, objects, signs or designs are used in any advertisement.

(e) "Pharmacy Technician," has the meaning set forth in the Pharmacy Practice Act, 225 ILCS 85 et seq., on the effective date of this Chapter and as thereafter amended. At the time of passage of this ordinance, the meaning of this term includes, in part, any person registered with the Illinois Department of Professional Regulation where such registration shall be the sole authority required to assist licensed pharmacists in the practice of pharmacy, under the supervision of a licensed pharmacist and who may, under the supervision of a pharmacist, assist in the practice of pharmacy and perform such functions as assisting in the dispensing process, offering counseling, receiving new verbal prescription orders, and having prescriber contact

concerning prescription drug order clarification but who may not engage in patient counseling, drug regimen review, or clinical conflict resolution.

(f) “Retaliatory Action” means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms and conditions of employment of any employee of a pharmacy that is taken in retaliation for the employee’s involvement in a protected activity as set forth in paragraph (a) of subsection 7-25-030.

7-25-020. Pharmacy Work Rules.

In addition to all other applicable rules and regulations, it shall be unlawful for the owner of any pharmacy to operate or conduct the same, or to allow the same to be operated or conducted unless:

- (a) it has a licensed pharmacist, authorized to practice pharmacy by the State of Illinois, and at least one pharmacy technician registered by the State of Illinois on duty whenever the practice of pharmacy is conducted; and
- (b) a pharmacist is not allowed to dispense prescription orders for more than ten (10) patients in one (1) hour; and
- (c) the pharmacy mandates at least ten (10) pharmacy technician hours per one hundred (100) prescriptions filled; and
- (d) the pharmacy prohibits pharmacy staff performance metrics or productivity quotas that include activities unrelated to drug order fulfillments and patient counseling including but not limited to activities involving advertising, solicitation, and promotional requirements; and
- (e) pharmacists have a minimum of two uninterrupted fifteen (15) minute paid rest breaks and one uninterrupted thirty (30) minute meal break period in each workday on which the pharmacist works at least seven (7) hours, additionally, a pharmacy may not require a pharmacist to work during a break or meal period; and
- (f) the pharmacy has available to pharmacists and pharmacy technicians at all times an area specifically purposed for break periods, with appropriate seating and table options, that is suitably maintained for cleanliness and comfort; and
- (g) the pharmacy keeps a complete and accurate record of the break periods of its pharmacists and pharmacy technicians; and
- (h) when any pharmacist or pharmacy technician has a work shift longer than eight (8) hours, a list of pharmacist and pharmacy technician work hours shall be clearly posted in an area plainly visible to pharmacy customers.

7-25-025. Record Retention.

There shall be kept in every drugstore or pharmacy a suitable book, file, or electronic record keeping system in which shall be preserved for a period of not less than five (5) years the original, or an exact, unalterable image, of every written prescription and the original transcript

or copy of every verbal prescription filled, compounded, or dispensed, in such pharmacy; and such book or file of prescriptions shall at all reasonable times be open to inspection to the pharmacy coordinator and the duly authorized agents or employees of the Department of Public Health and the Department of Business Affairs and Consumer Protection. In addition, any errors in receiving, filling, or dispensing of prescription of any kind, including any errors resulting in an adverse drug interaction or adversely affecting the health of the patient shall be a part of these records.

7-25-030. Whistleblower Protections.

(a) A pharmacy shall not take any retaliatory action against an employee of the pharmacy because an employee does any of the following:

- (1) discloses or threatens to disclose to a supervisor or to a public body an activity, an action, policy, or practice implemented by a pharmacy that the employee reasonably believes is in violation of a law, rule, or regulation; or
- (2) provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of a law, rule or regulation by a pharmacy; or
- (3) assists or participates in a proceeding to enforce the provisions of this Section.

(b) A violation of this Section may be established only upon a finding that: (1) the employee of the pharmacy engaged in conduct described in 7-25-030(a), and (2) this conduct was a contributing factor in the retaliatory action alleged by the employee. There is no violation of this Section, however, if the facility demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct.

(c) *Private right of action.* With respect to this subsection 7-25-030, an aggrieved employee may bring an action in a court of competent jurisdiction for violations of the rights set forth herein. The employee of the pharmacy may be awarded all remedies necessary to make the employee whole and to prevent future violations of this Section. Remedies imposed by the court may include, but are not limited to, all of the following: reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position; two times the amount of back pay; reinstatement of full fringe benefits and seniority rights; and payment of reasonable costs and attorney's fees.

(d) The rights, obligations, and remedies set forth in this subsection 7-25-030 shall be cumulative and in addition to any others available at law or in equity.

7-25-035. Waiver.

(a) Any waiver by a pharmacy employee or pharmacist of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Provided, however, the

requirements of this Section 7-25-020 (d), (e) and (f) may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

7-25-040. Applicability.

This section shall not apply to a pharmacy licensed by the State of Illinois Department of Financial and Professional Regulation engaged in the practice of Pharmacy (as defined by the Illinois Pharmacy Practice Act, 225 ILCS 85/1 et seq., as amended) that is operated by a hospital, hospital affiliate, or nursing home.

7-25-045. Violations

Any person who violates this section shall be fined not less than \$250 and no more than \$1,500 for each offense. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply.

7-25-050. Enforcement.

The Department of Business Affairs and Consumer Protection shall enforce this Chapter, and the Commissioner is authorized to adopt regulations for the proper administration and enforcement of its provisions.

7-25-055. Severability.

If any provision, clause, sentence, paragraph, section or part of this chapter or application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof already involved in the controversy in which such judgment has been rendered and to the person and circumstances affected thereby.

SECTION 3. This ordinance shall be in full force and effect 180 days from passage and approval.

Edward M. Burke
Alderman, 14th Ward

Leslie Hairston
Alderman, 5th Ward

CHICAGO October 11, 2017

To the President and Members of the City Council:

Your Committee on Finance having had under consideration

A substitute ordinance concerning the authority to amend Chapter 7-24 of the Municipal Code of Chicago by creating Section 7-24-010 regarding Pharmacy Work Rules.

O2017-979

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Substitute Ordinance Transmitted Herewith.

This recommendation was concurred in by _____ (a viva voce vote of members of the committee with 1 dissenting vote(s)).

Alderman Carrie Austin voted no.

Respectfully submitted

(signed) _____

Chairman