



## AND THE LAW

By Don. R. McGuire Jr., R.Ph., J.D.

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### INSURANCE COVERAGE FOR NEW ADVANCES

An earlier article in this series talked about preparing to enter the exciting period of change that is occurring in the pharmacy profession. Recent changes in a number of states have broadened the clinical and patient care activities that can be undertaken by pharmacists.

These changes take many different forms. Ohio passed a bill that authorizes pharmacists to provide a large number of patient care activities, including ordering and analyzing the results of blood and urine tests, ordering up to a 30 day supply of life saving medication when a physician is unavailable, and modifying drug therapy (including ordering new drugs). Many other states also allow pharmacists to order and interpret laboratory tests. Most states allow pharmacists to participate in Collaborative Practice Agreements (CPA). The activities allowed under a CPA vary tremendously from state to state. These can include initiation of drug therapy, modification of drug therapy and/or discontinuation of drug therapy. Another development is the use of statewide protocols to allow pharmacists to prescribe certain medications. The leaders in this area

are New Mexico, Idaho, California, and Oregon, but other states are beginning to follow their lead. Among the medications that pharmacists are allowed to prescribe are emergency contraception, smoking cessation, oral hormonal contraceptives, and preventative prescription medications recommended by the CDC for people traveling outside the US.

A question that should come to mind for every pharmacist involved is whether they are covered by their insurance policy for these activities. This is a very important and challenging question because the coverage provided by each insurance company is different. You cannot just assume that new practices are covered. Each insurance company can determine what they do and do not want to cover in a policy, regardless of what constitutes your state's scope of practice. For example, there are policies available in the marketplace that exclude damages resulting from patient counseling – whether or not the counseling is required by law. Whether the services you provide are required or optional, you will want to be sure you are adequately protected. It

is never safe to assume that you have coverage for something that you cannot find in your policy without first asking and validating it with your insurance company.

So how do you go about examining your insurance coverage? Remember that under the law, insurance is a contract. The terms of that contract or agreement are spelled out in the insurance policy. While every provision is important, three parts of the policy are key to our question.

They are the definitions, the insuring agreement, and exclusions. Make sure that the activity in question is included in the definitions and/or the insuring agreement of the policy and that it is not included in the exclusions.

In a situation like we have in these states, new activities recently authorized likely will not be found in the policy yet. There is a time lag due to the requirement that insurance policies be approved by the Department of Insurance in each state. Because of this lag, coverage will depend on the insurance company's interpretation of its existing policy language. Some policies carry a broad definition of what activities are covered. For example, the policy may say that you are covered for your acts as a pharmacist or for your acts within the profession of pharmacy. For cutting edge advances, you may not know how your insurance company will interpret what acts they are intending to cover. Another insurance company includes the phrase, "*and other services of a professional nature legally performed by 'you'.*" This phrase picks up newly authorized activities until policies can be rewritten to specifically include them in the policy language. It is important to note that the phrase also includes the words "legally performed". The pharmacist would need to complete any required training program or certifications prior to providing these services for the

coverage to apply. It is also important to comply with all procedures and recordkeeping required by the law.

Pharmacists will need to verify what activities they are legally allowed to provide in their state. Once they have chosen the activities that they wish to add to their practice, pharmacists need to verify coverage with their insurance company because every insurance company is different.

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*This article discusses general principles of law and risk management. It is not intended as legal advice. Pharmacists should consult their own attorneys and insurance companies for specific advice. Pharmacists should be familiar with policies and procedures of their employers and insurance companies, and act accordingly.*