LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature First Regular Session - 2015

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 8

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO PHARMACISTS; AMENDING SECTION 54-1705, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1732, IDAHO CODE, TO PROHIBIT WHOLESALE DISTRIBUTION OF DRUGS OR DEVICES BY PHARMACIES, WITH CERTAIN EXCEPTIONS AND TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 54-1734, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS MAY POSSESS LEGEND DRUGS; AMENDING SECTION 54-1735, IDAHO CODE, TO PROVIDE THAT PHARMACISTS KEEP PATIENT RECORDS; AMENDING SECTION 54-1752, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 54-1753, IDAHO CODE, TO REVISE AND CLARIFY LICENSURE REQUIREMENTS, TO REQUIRE THAT WHOLESALE DISTRIBUTORS MONITOR AND IDENTIFY CERTAIN DRUG ORDERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1754, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO RETURNS OR EXCHANGES OF PRESCRIPTION DRUGS AND TO PROHIBIT CERTAIN WHOLESALE DISTRIBUTIONS; AMENDING SECTION 54-1758, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO PROHIBITED ACTS, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 54-1755, IDAHO CODE, RELATING TO PEDIGREE; REPEALING SECTION 54-1756, IDAHO CODE, RELATING TO ENFORCEMENT ORDERS; AND AMENDING SECTIONS 37-3201, 54-1759, 54-1761, 54-4702 AND 54-5110, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1705, Idaho Code, be, and the same is hereby amended to read as follows:

54-1705. DEFINITIONS. In this chapter:

(1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Central drug outlet" means a resident or nonresident pharmacy, drug outlet, or business entity employing or contracting pharmacists to perform centralized pharmacy services.

(3) "Central pharmacist" means a pharmacist performing centralized pharmacy services.

(4) "Centralized pharmacy services" means the processing by a central drug outlet or central pharmacist of a request from another pharmacy to fill, refill, or dispense a prescription drug order, perform processing functions or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations.

(5) "Compounding" means the ~~act of incorporating two (2) or more substances to create~~ practice in which a pharmacist, a prescriber, or, in the case of an outsourcing facility, a person under the supervision of a pharmacist, combines, mixes or alters ingredients of a ~~finished~~ drug ~~product~~ to create a medication tailored to the needs of an individual patient.

(6) "Counseling" or "counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices. Specific areas of counseling shall include, but are not limited to:

(a) Name and strength and description of the drug;

(b) Route of administration, dosage, dosage form, continuity of therapy and refill information;

(c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;

(d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the drug or device as was intended by the prescriber, and the action required if they occur;

(e) Techniques for self-monitoring drug therapy; and

(f) Action to be taken in the event of a missed dose.

(7) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

(8) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar related article including any component part or accessory which is:

(a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;

(b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Intended to affect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(9) "Dispense" or "dispensing" means the preparation and delivery of a drug pursuant to a lawful prescription drug order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription.

(10) "Distribute" means the delivery of a drug other than by administering or dispensing.

(11) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(12) "Drug order" means a prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes as defined in rules. Unless specifically differentiated, state law applicable to a prescription drug order is also applicable to a drug order.

(13) "Drug outlets" means all resident or nonresident pharmacies, business entities and other facilities where employees or personnel are engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices in or into Idaho.

(14) "Extern" means a bona fide student enrolled in an approved school or college of pharmacy who has not received his first professional degree in pharmacy.

(15) "Externship" means a structured practical experience program in pharmacy administered by a school or college of pharmacy.

(16) "Institutional facility" means a facility for which its primary purpose is to provide a physical environment for patients to obtain health care services and in which patients spend a majority of their time, as may be further defined by board rules.

(17) "Intern" means any person who has completed a course of study at an approved school or college of pharmacy, received the first professional degree in pharmacy and is registered with the board as a pharmacist intern. Interns must register with the board prior to commencement of an internship program.

(18) "Internship" means a postgraduate practical experience program under the supervision of a preceptor.

(19) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(20) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law.

(21) "Limited service outlet" means a resident or nonresident facility or business entity that is subject to registration by the board, pursuant to section 54-1729, Idaho Code, and has employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices but is not a retail pharmacy, institutional facility, manufacturer, wholesaler, veterinary drug outlet, nonresident central drug outlet or mail service pharmacy.

(22) "Mail service pharmacy" means a nonresident pharmacy that ships, mails or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law.

(23) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or indepen-

dently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering, dispensing or, as authorized by board rule, distributing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(24) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(25) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription drug order and which are prepackaged for use by the consumer and labeled in accordance with state and federal law.

(26) "Nonresident" means a person or business entity located in the District of Columbia or a state other than Idaho that practices pharmacy including, but not limited to, pharmaceutical care services into Idaho.

(27) "Outsourcing facility" means a facility that is registered by the United States food and drug administration pursuant to 21 U.S.C. section 353b and either registered or endorsed by the board.

(28) "Person" means an individual, corporation, partnership, association or any other legal entity.

(2~~8~~9) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

(~~29~~30) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist registered by this state who is located in another state or the District of Columbia and is engaged in the practice of pharmacy into Idaho, unless exempted.

(3~~0~~1) "Pharmacist-in-charge" (PIC) means a pharmacist whose qualifications, responsibilities and reporting requirements are defined in rule.

(3~~1~~2) "Pharmacy" means any facility, department or other place where prescription drug orders are filled or compounded and prescriptions are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(3~~2~~3) "Practitioner" means a person licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(3~~3~~4) "Precursor" means a substance, other than a legend drug, which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture

of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(3~~4~~5) "Preceptor" means a pharmacist licensed and in good standing who supervises the internship or externship training of a registered student pharmacist. The preceptor shall be actively engaged in the practice of pharmacy on a full-time employment basis.

(3~~5~~6) "Prescriber" means an individual currently licensed, registered or otherwise authorized to prescribe and administer drugs in the course of professional practice.

(3~~6~~7) "Prescription drug or legend drug" means a drug ~~which,~~ that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:

(a) "Caution: Federal law prohibits dispensing without a prescription"; or

(b) "Rx Only"; or

(c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription drug order only or is restricted to use by practitioners only.

(3~~7~~8) "Prescription drug order" means a valid order of a practitioner for a drug or device for an ultimate user of the drug or device.

(3~~8~~9) "Prospective drug review" includes, but is not limited to, the following activities:

(a) Evaluation of the prescription drug order for:

(i) Known allergies;

(ii) Rational therapy contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use.

(b) Evaluation of the prescription drug order for duplication of therapy.

(c) Evaluation of the prescription drug order for interactions:

(i) Drug-drug;

(ii) Drug-food; and

(iii) Drug-disease.

(d) Evaluation of the prescription drug order for proper utilization:

(i) Over or under utilization; and

(ii) Abuse/misuse.

(~~39~~40) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

(4~~0~~1) "Sale" means every sale and includes:

(a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;

(b) Exposure, offer, or any other proffer;

(c) Holding, storing or any other possession;

(d) Dispensing, giving, delivering or any other supplying; and
(e) Applying, administering or any other usage.
(4~~1~~2) ~~"Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage~~ "Ultimate user" means a person who lawfully possesses a drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.
(4~~2~~3) "Wholesaler" means a person ~~engaged~~ who in the usual course of business ~~of distributing legend~~ lawfully distributes drugs ~~that he himself has not produced~~ or ~~prepared,~~ devices in or into Idaho to persons ~~included in any of~~ other than the ~~classes named in subsection (2)(a) through (f) of section 54-1734, Idaho Code~~ ultimate user.

SECTION 2. That Section 54-1732, Idaho Code, be, and the same is hereby amended to read as follows:

54-1732. VIOLATIONS AND PENALTIES. (1) No drug outlet designated in section 54-1729, Idaho Code, shall be operated until a certificate of registration has been issued to said facility by the board. Upon the finding of a violation of this subsection, the board may impose one (1) or more of the penalties enumerated in section 54-1728, Idaho Code.
(2) Reinstatement of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified in section 54-1728(6), Idaho Code.
(3) The following acts, or the failure to act, and the causing of any such act or failure are unlawful:
(a) The sale, delivery or administration of any prescription drug or legend drug unless:
(i) Such legend drug is dispensed or delivered by a pharmacist upon an original prescription, drug order or prescription drug order by a practitioner in good faith in the course of his practice. Any person violating the provisions of this subparagraph shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars ($5,000) or by both such fine and imprisonment.
(ii) In the case of a legend drug dispensed by a pharmacist or prescriber, there is a label affixed to the immediate container in which such drug is dispensed. Any person violating this subparagraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500). Nothing in this subparagraph prohibits a practitioner from delivering professional samples of legend drugs in their original containers in the course of his practice when oral directions for use are given at the time of such delivery.
(b) The refilling of any prescription or drug order for a legend drug except as designated on the prescription or drug order, or by the authorization of the practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year,

or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(c) The possession or use of a legend drug or a precursor by any person unless such person obtains such drug on the prescription or drug order of a practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(d) The wholesale distribution of drugs or devices by a pharmacy except for:

(i) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.

(ii) The sale of minimal quantities of prescription drugs to practitioners for office use.

(iii) The sale of a prescription drug for emergency medical reasons, but never to a wholesale distributor.

(iv) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees or a colicensed product, but never to a wholesale distributor.

(e) The failure to keep records as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(ef) The refusal to make available and to accord full opportunity to check any record, as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(~~f~~g) It is unlawful to:

(i) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by fraud, deceit, misrepresentation or subterfuge; by the forgery or alteration of a prescription, drug order, or of any written order; by the concealment of a material fact; or by the use of a false name or the giving of a false address.

(ii) Communicate information to a physician in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug. Any such communication shall not be deemed a privileged communication.

(iii) Intentionally make a false statement in any prescription, drug order, order, report or record required by this chapter.

(iv) For the purpose of obtaining a legend drug to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other person.

(v) Make or utter any false or forged prescription or false drug order or forged written order.

(vi) Affix any false or forged label to a package or receptacle containing legend drugs. This subparagraph does not apply to law enforcement agencies or their representatives while engaged in enforcing state and federal drug laws.

(vii) Wholesale or retail any prescription or legend drug to any person in this state not entitled by law to deliver such drug to another.

Every violation of ~~subsection (3)(f)~~ paragraph (g)(i) through (vi) of this subsection shall be a misdemeanor and any person convicted thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or fined not more than one thousand dollars ($1,000), or punished by both such fine and imprisonment. Any person violating ~~subsection (3)(f)~~ paragraph (g)(vii) of this subsection is guilty of a felony and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars ($5,000), or by both such fine and imprisonment.

(4) Provided however, that a veterinarian may dispense or deliver a legend drug prescribed for an animal upon the prescription, drug order, or prescription drug order of another veterinarian. The label shall be affixed pursuant to subsection (3)(a)(ii) of this section, and penalties for violations of the provisions of this subsection shall be as provided in this section for like violations by a pharmacist.

(5) The ultimate user of a legend drug who has lawfully obtained such legend drug may deliver, without being registered, the legend drug to another person for the purpose of disposal of the legend drug if the person receiving the legend drug for purposes of disposal is authorized under a state or federal law or regulation to engage in such activity.

SECTION 3. That Section 54-1734, Idaho Code, be, and the same is hereby amended to read as follows:

54-1734. ~~EXCEPTIONS~~ POSSESSION OF LEGEND DRUGS. ~~The provisions of this chapter pertaining to the sale of prescription drugs are not applicable:~~

(1) ~~To the sale of legend drugs to persons included in any of the classes named in paragraphs (a) through (g) in subsection (2) of this section, or to the agents or employees of such persons, for use in the usual and lawful course of their business or practice or in the performance of their lawful official duties, as the case may be; or~~

~~(2) To t~~The following persons or their agents or employees may possession of legend drugs ~~by such persons or their agents or employees~~ for ~~such~~ use in the usual and lawful course of their business or practice or in the performance of their lawful official duties, without a valid prescription drug order:

(a) Pharmacists;

(b) ~~Practitioners~~ Prescribers;

(c) ~~Persons who procure legend drugs for handling by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale~~ Researchers who are prohibited from further distribution;

(d) Hospitals and other ~~institutions which procure legend drugs for lawful administration by practitioners~~ institutional facilities;

(e) Manufacturers and wholesalers;

(f) Common carriers ~~and warehousemen~~ solely in the usual course of business of transporting prescription drugs; and

(g) Schools possessing stock supplies of epinephrine auto-injectors pursuant to section 33-520A, Idaho Code.

(~~3~~2) ~~To the sale by a business not licensed as a pharmacy of~~ Veterinary drug outlets or their agents or employees may possess legend drugs, ~~(~~excluding controlled substances~~),~~ ~~designated~~ for ~~veterinary~~ use ~~which require~~ in the usual and lawful course of their business or practice or in the performance of their lawful official duties, without a valid prescription~~, provided that:~~ drug order.

~~(a) The business is registered and licensed with the board of pharmacy.~~

~~(b) The sale is authorized by a written or oral order from a veterinarian licensed in this or another state.~~

~~1. Prior to dispensing an order from an out-of-state veterinarian, the seller must confirm and document that the veterinarian is properly licensed in his state.~~

~~2. Oral orders must be confirmed by the veterinarian in writing no later than seven (7) days after the seller receives the order.~~

~~(c) The written order or confirmation of an oral order must be retained on the premises of the business for at least two (2) years after the original date of the order.~~

SECTION 4. That Section 54-1735, Idaho Code, be, and the same is hereby amended to read as follows:

54-1735. ~~MAINTENANCE OF~~ PATIENT MEDICATION RECORDS. ~~(1) Manufacturers and wholesalers. Manufacturers and wholesalers shall maintain records of the movement in commerce of legend drugs for two (2) years immediately following the date of the last entry on such record and shall make such records available, at reasonable times, to law enforcement agencies and their representatives in the enforcement of this act. Evidence obtained under this section may not be used in a criminal prosecution of the person from whom obtained.~~

~~(2) Pharmacies.~~ In order to effectively counsel patients, the pharmacist shall make a reasonable effort to obtain, record and maintain significant patient information including, but not limited to:

(~~a~~1) Name, address, telephone number;

(~~b~~2) Date of birth (age), gender;

(~~c~~3) Medical history:

~~1.~~(a) Disease state(s);

~~2.~~(b) Allergies/drug reactions; and

~~3.~~(c) Current list of medications and devices;

(~~d~~4) Pharmacist comments.

SECTION 5. That Section 54-1752, Idaho Code, be, and the same is hereby amended to read as follows:

54-1752. DEFINITIONS. As used in sections 54-1751 through 54-1759, Idaho Code:

(1) ~~"Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.~~

~~(2) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:~~

~~(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and~~

~~(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.~~

~~(3)~~ "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(~~4~~2) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

~~(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.~~

~~(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.~~

(~~7~~3) "Manufacturer" means a person, including a colicensed partner or affiliate of that person, who prepares, derives, manufactures, produces or repackages a drug or is licensed or approved by the federal food and drug administration to engage in the manufacture of drugs ~~or devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act~~.

~~(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.~~

~~(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third party logistics provider, from that manufacturer to that manufacturer's exclusive distributor, or from that manufacturer directly or through its colicensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, either directly or by drop shipment, to:~~

~~(a) A pharmacy to a patient;~~

~~(b) Other designated persons authorized by law to dispense or administer such drug to a patient;~~

~~(c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;~~

~~(d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or~~

~~(e) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.~~

~~(10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.~~

(~~11~~4) "Person" means an individual, corporation, business entity, government, governmental subdivision or agency, partnership, business trust, association or any other legal entity.

(~~12~~5) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(~~13~~6) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription

drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.

(~~14~~7) ~~"Repackager" means a person who repackages~~ "Reverse distributor" means a drug outlet that receives nonsaleable prescription drugs from persons or their agents, who may lawfully possess prescription drugs without being issued a valid prescription drug order, and processes for credit or disposes of such prescription drugs.

~~(15) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.~~

~~(16) "Veterinary pharmacy" means a business properly licensed as a pharmacy engaging exclusively in the preparation and dispensing of prescription drugs for veterinary prescribed use.~~

~~(17) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:~~

~~(a) Manufacturers;~~

~~(b) Repackagers;~~

~~(c) Own-label distributors;~~

~~(d) Private-label distributors;~~

~~(e) Jobbers;~~

~~(f) Brokers;~~

~~(g) Warehouses, including manufacturers' and distributors' warehouses;~~

~~(h) Manufacturers' exclusive distributors;~~

~~(i) Authorized distributors of record;~~

~~(j) Drug wholesalers or distributors;~~

~~(k) Independent wholesale drug traders;~~

~~(l) Specialty wholesale distributors;~~

~~(m) Third party logistics providers;~~

~~(n) Retail pharmacies that conduct wholesale distribution; and~~

~~(o) Chain pharmacy warehouses that conduct wholesale distribution.~~

~~To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record.~~

(~~18~~8) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(a) ~~Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.~~

~~(b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.~~

~~(c) The distribution of prescription drug samples by manufacturers' representatives.~~

~~(d)~~ Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.

~~(e) Drug donations, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.~~

~~(f) The sale of minimal quantities of prescription drugs by pharmacies to licensed practitioners for office use.~~

(~~g~~b) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.

~~(h) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.~~

~~(i) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.~~

(~~j~~c) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.

(~~k~~d) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, mis-picked, returned or recalled prescription drugs to the original manufacturer, original wholesaler, or third party returns processor, including a reverse distributor.

~~(l) The sale of a prescription drug by a veterinary pharmacy to the prescribing veterinarian in which:~~

~~(i) The prescribing veterinarian takes title but not physical possession of such prescription drug and invoices the owner or person having custody of the animal for whom the prescription drug is intended; and~~

~~(ii) Pursuant to a valid prescription drug order the veterinary pharmacy labels and delivers the prescription drug directly to the owner or person having custody of the animal for whom the prescription drug is intended.~~

SECTION 6. That Section 54-1753, Idaho Code, be, and the same is hereby amended to read as follows:

54-1753. WHOLESALE DRUG DISTRIBUTOR LICENSING REQUIREMENT -- MINIMUM REQUIREMENTS FOR LICENSURE. (1) Every ~~wholesale distributor who~~ business entity that engages in the wholesale distribution of prescription drugs in or into Idaho must be licensed by the board~~, and every nonresident wholesale distributor must be licensed by the board if it ships prescription drugs into this state in accordance with this act before engaging in wholesale~~

~~distributions of wholesale prescription drugs. The board shall exempt~~ as a wholesale distributor except:

(a) M~~m~~anufacturers distributing their own federal food and drug administration approved drugs and devices ~~from any licensing and other requirements to the extent not required by federal law or regulation~~ including distribution of prescription drug samples by manufacturer's representatives and intracompany sales, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity or any transfer between colicensees of a colicensed product, unless particular requirements are deemed necessary and appropriate following rulemaking.

(b) An entity that donates prescription drugs, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.

(c) A pharmacy distributing in accordance with section 54-1732, Idaho Code.

(d) Persons selling, purchasing, distributing, trading or transferring a prescription drug for emergency medical reasons.

(2) The board shall require the following minimum information from each wholesale distributor applying for a license under subsection (1) of this section:

(a) The name, full business address and telephone number of the licensee;

(b) All trade or business names used by the licensee;

(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;

(d) The type of ownership or operation, i.e., partnership, corporation, or sole proprietorship;

(e) The name of each person who is an owner or an operator of the licensee;

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs;

(g) The name of the applicant's designated representative for the facility, together with the personal information statement and fingerprints, required pursuant to paragraph (h) of this subsection ~~(2)~~ for such individual;

(h) Each individual required by paragraph (g) of this subsection ~~(2)~~ to provide a personal information statement and fingerprints shall provide the following information to the board:

(i) The individual's places of residence for the past seven (7) years;

(ii) The individual's date and place of birth;

(iii) The individual's occupations, positions of employment and offices held during the past seven (7) years;

(iv) The principal business and address of any business, corporation or other organization in which each such office of the individual was held or in which each such occupation or position of employment was carried on;

(v) Whether the individual has been, during the past seven (7) years, the subject of any proceeding for the revocation of any license or any criminal violation and, if so, the nature of the proceeding and the disposition of the proceeding;

(vi) Whether, during the past seven (7) years, the individual has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control or distribution of prescription drugs or criminal violations, together with details concerning any such event;

(vii) A description of any involvement by the individual with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven (7) years, which manufactured, administered, prescribed, distributed or stored pharmaceutical products, and any lawsuits in which such businesses were named as a party and in which the individual was also a named party in the same lawsuit or, regardless of whether the individual was a named party, in which the individual testified as a witness at trial or in a deposition;

(viii) A description of any felony criminal offense of which the individual, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the individual pled guilty or nolo contendere. If the individual indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within fifteen (15) days after the disposition of the appeal, submit to the board a copy of the final written order of disposition; and

(ix) A photograph of the individual taken in the previous year.

(3) The information required pursuant to subsection (2) of this section shall be provided under oath.

(4) The board shall not issue a wholesale distributor license to an applicant, unless the board:

(a) Conducts a physical inspection of the facility at the address provided by the applicant as required in subsection (2)(a) of this section or approves an inspection report that evidences equivalent standards to those in Idaho; and

(b) Determines that the designated representative meets the following qualifications:

(i) Is at least twenty-one (21) years of age;

(ii) Has been employed full time for at least three (3) years in a pharmacy or with a wholesale distributor in a capacity related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs;

(iii) Is employed by the applicant full time in a managerial level position;

(iv) Is actively involved in and aware of the actual daily operation of the wholesale distributor;

(v) Is physically present at the facility of the applicant during regular business hours, except when the absence of the designated

representative is authorized including, but not limited to, sick leave and vacation leave;

(vi) Is serving in the capacity of a designated representative for only one (1) applicant at a time, except where more than one (1) licensed wholesale distributor is colocated in the same facility and such wholesale distributors are members of an affiliated group, as defined in section 1504 of the Internal Revenue Code;

(vii) Does not have any convictions under any federal, state or local law relating to wholesale or retail prescription drug distribution or distribution of controlled substances; and

(viii) Does not have any felony convictions under federal, state or local law.

(5) ~~The board~~ All applicant-designated representatives shall submit ~~the fingerprints provided by a person with a license application for a statewide~~ to a fingerprint-based criminal ~~records~~ history check of the Idaho central criminal history database and ~~for forwarding to~~ the federal bureau of investigation ~~for a national~~ criminal ~~records check of the individual~~ history database. Each applicant shall submit a completed ten (10) finger fingerprint card or scan to the board of pharmacy at the time of application and shall pay the cost of the criminal history check.

(6) If a wholesale distributor distributes prescription drugs in or into Idaho from more than one (1) facility, the wholesale distributor shall obtain a license for each facility.

(7) ~~In accordance with each licensure renewal, the board shall send to each wholesale distributor licensed under this section a form setting forth the information that the wholesale distributor provided pursuant to subsection (2) of this section. Within thirty (30) days of receiving such form, the wholesale distributor must identify and state under oath to the board all changes or corrections to the information that was provided pursuant to subsection (2) of this section. Changes in, or corrections to, any information in subsection (2) of this section shall be submitted to the board as required by the board. The board may suspend or revoke the license of a wholesale distributor if such authority determines that the wholesale distributor no longer qualifies for the license issued under this section~~ A wholesale distributor shall have adequate processes in place for monitoring purchase activity of customers and identifying suspicious ordering patterns that identify potential diversion or criminal activity related to controlled substances such as orders of unusual size, orders deviating substantially from a normal pattern, orders for drugs that are outside of the prescriber's scope of practice, or orders of unusual frequency.

(8) The designated representative identified pursuant to subsection (2)(g) of this section must receive and complete continuing training in applicable federal law and the law of this state governing wholesale distribution of prescription drugs.

(9) The board may adopt rules to approve an accreditation body to evaluate a wholesaler's operations to determine compliance with professional standards and any other applicable laws, and to perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesaler.

~~(10) Information provided under this section shall not be disclosed to any person other than a state licensing authority, government board or government agency, provided such licensing authority, government board or agency needs such information for licensing or monitoring purposes.~~

SECTION 7. That Section 54-1754, Idaho Code, be, and the same is hereby amended to read as follows:

54-1754. RESTRICTIONS ON TRANSACTIONS. (1) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of expired, damaged, recalled or otherwise nonsaleable pharmaceutical product shall be distributed by the receiving wholesale distributor only to either the original manufacturer or third party returns processor, including a reverse distributor. ~~The returns or exchanges of prescription drugs, saleable or otherwise, including any redistribution by a receiving wholesaler, shall not be subject to the pedigree requirement of section 54-1755, Idaho Code, so long as they are exempt from pedigree under the federal food and drug administration's currently applicable prescription drug marketing act guidance.~~ Wholesale distributors and pharmacies shall be held accountable for administering their returns process and ensuring that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.

(2) A wholesale distributor shall not engage in the wholesale distribution of prescription drugs that are purchased from pharmacies or practitioners or from wholesale distributors that purchase them from pharmacies or practitioners.

(~~2~~3) A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the appropriate state licensing agency to manufacture, distribute, dispense, conduct research or independently administer such prescription drugs. A manufacturer or wholesale distributor shall furnish a scheduled controlled substance listed in section 37-2705, 37-2707, 37-2709, 37-2711 or 37-2713, Idaho Code, only to a person who has been issued a valid controlled substance registration by the United States drug enforcement administration and the Idaho board of pharmacy, unless exempted by state or federal law.

(~~3~~4) Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered only to the premises listed on the license; provided that the manufacturer or wholesale distributor may furnish prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(a) The identity and authorization of the recipient is properly established; and

(b) This method of receipt is employed only to meet the immediate needs of a particular patient of the authorized person.

(45) Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug so received. Any discrepancy between receipt and the type and quantity of the prescription drug actually received shall be reported to the

delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.

(~~5~~6) A manufacturer or wholesale distributor shall not accept payment for, or allow the use of, a person's credit to establish an account for the purchase of prescription drugs from any person other than the owner(s) of record, the chief executive officer or the chief financial officer listed on the license of a person legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee.

SECTION 8. That Section 54-1758, Idaho Code, be, and the same is hereby amended to read as follows:

54-1758. PROHIBITED ACTS. (1) It shall be unlawful for a person to knowingly perform, or cause the performance of, or aid and abet any of the following acts in this state:

(a) Failure to obtain a license when a license is required by this ~~act~~ chapter;

(b) Operate as a wholesale distributor without a valid license when a license is required by this ~~act~~ chapter;

(c) Purchase from or otherwise receive, return or exchange a prescription drug from a pharmacy or chain pharmacy warehouse, other than in compliance with section 54-1754(1), Idaho Code;

(d) When a state license is required pursuant to section 54-1754(~~2~~3), Idaho Code, sell, distribute, transfer or otherwise furnish a prescription drug to a person who is not authorized under the law of the jurisdiction in which the person received the prescription drug to receive the prescription drug;

(e) Failure to deliver prescription drugs to specified premises, as required by section 54-1754(~~3~~4), Idaho Code;

(f) Acceptance of payment or credit for the purchase of prescription drugs, other than in compliance with section 54-1754(~~5~~6), Idaho Code;

(g) ~~Failure to maintain or provide pedigrees as required by this act;~~

~~(h) Failure to obtain, pass or authenticate a pedigree, as required by this act;~~

~~(i)~~ Provide the board or any of its representatives or any federal official with false or fraudulent records or make false or fraudulent statements regarding any matter within the provisions of this ~~act~~ chapter;

(~~j~~h) Obtain, or attempt to obtain, a prescription drug by fraud, deceit or misrepresentation or engage in misrepresentation or fraud in the distribution of a prescription drug;

(~~k~~i) Manufacture, repackage, sell, transfer, deliver, hold or offer for sale any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit or otherwise has been rendered unfit for distribution;

(~~l~~j) Adulterate, misbrand or counterfeit any prescription drug;

(~~m~~k) Receive any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;

(~~k~~l) Deliver or proffer delivery of, for pay or otherwise, any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;

(~~o~~m) Alter, mutilate, destroy, obliterate or remove the whole or any part of the labeling of a prescription drug or commit any other act with respect to a prescription drug that results in the prescription drug being misbranded; or

(~~p~~n) Sell, deliver, transfer or offer to sell to a person not authorized under law to receive the return or exchange of a prescription drug, a prescription drug that has expired, been damaged or recalled by either the original manufacturer, a third party returns processor or a reverse distributor.

(2) The acts prohibited in subsection (1) of this section do not include a prescription drug manufacturer, or agent of a prescription drug manufacturer, who obtains or attempts to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

SECTION 9. That Section 54-1755, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 54-1756, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Section 37-3201, Idaho Code, be, and the same is hereby amended to read as follows:

37-3201. DEFINITIONS. As used in this chapter:

(1) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, or marks or monograms unique to the manufacturer or distributor of the drug, or both;

(2) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label even though he is not the actual manufacturer of the drug;

(3) "Solid dosage form" means capsules or tablets intended for oral use;

(4) "Legend drug" means any drug defined by section 54-1705(3~~6~~7), Idaho Code.

SECTION 12. That Section 54-1759, Idaho Code, be, and the same is hereby amended to read as follows:

54-1759. PENALTIES. (1) Any person who commits any act prohibited by section 54-1758(1)(a) through ~~(1)(h)~~ (f), Idaho Code, is guilty of a misdemeanor, which is punishable by not more than one (1) year of imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or both.

(2) Any person who commits any act prohibited by section 54-1758(1)(~~i~~g) through ~~(1)(p)~~ (n), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand dollars ($500,000), or both.

(3) Any person who, with the intent to commit any of the acts prohibited by section 54-1758(1)(~~i~~g) through ~~(1)(p)~~(n), Idaho Code, commits any act prohibited by section 54-1758(1)(a) through ~~(1)(h)~~(f), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand dollars ($500,000), or both.

(4) Any criminal penalty imposed on a person who commits any act prohibited by section 54-1758, Idaho Code, is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

SECTION 13. That Section 54-1761, Idaho Code, be, and the same is hereby amended to read as follows:

54-1761. DEFINITIONS. As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Legend drug" has the same meaning as provided in section 54-1705(3~~6~~7), Idaho Code.

(2) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(3) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code, acting in consultation with a pharmacist licensed in the state of Idaho.

SECTION 14. That Section 54-4702, Idaho Code, be, and the same is hereby amended to read as follows:

54-4702. DEFINITIONS. As used in this chapter:

(1) "Acupuncture" means that theory of health care developed from traditional and modern Oriental medical philosophies that employs diagnosis and treatment of conditions of the human body based upon stimulation of specific acupuncture points on meridians of the human body for the promotion, maintenance, and restoration of health and for the prevention of disease. Therapies within the scope of acupuncture include manual, mechanical, thermal, electrical and electromagnetic treatment of such specific indicated points. Adjunctive therapies included in, but not exclusive to, acupuncture include herbal and nutritional treatments, therapeutic exercise and other therapies based on traditional and modern Oriental medical theory.

(2) "Board" means the Idaho state board of acupuncture.

(3) "NCCAOM" means "National Certification Commission for Acupuncture and Oriental Medicine."

(4) "Practice of acupuncture" means the insertion of acupuncture needles and use of similar devices and therapies, including application of moxibustion, to specific indicated points on the skin of the human body as indicated pursuant to traditional and modern theories of Oriental medicine. The "practice of acupuncture" does not include:

(a) Surgery; or

(b) Prescribing, dispensing or administering any prescription drug or legend drug as defined in section 54-1705(3~~6~~7), Idaho Code.

SECTION 15. That Section 54-5110, Idaho Code, be, and the same is hereby amended to read as follows:

54-5110. NATUROPATHIC MEDICAL FORMULARY COUNCIL ESTABLISHED. There is hereby established a naturopathic medical formulary council, which is separate and distinct from the board, to be composed of seven (7) members. Two (2) members shall be naturopathic physicians licensed under this chapter and appointed by the board of naturopathic medical examiners. Three (3) members shall be pharmacists licensed under chapter 17, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of pharmacy. Two (2) members shall be physicians licensed under chapter 18, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of medicine. The initial council shall be appointed as follows: One (1) naturopathic physician shall be appointed for a one (1) year term; one (1) physician licensed under chapter 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two (2) year term; and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed under chapter 18, title 54, Idaho Code, shall be appointed for a three (3) year term. Thereafter, the term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be required for any vote to be taken. It shall be the duty of the naturopathic medical formulary council to establish a formulary for use by naturopathic physicians, and immediately upon adoption or revision of the formulary, the council shall transmit the approved formulary to the board, which shall adopt the formulary by temporary rule. The formulary will be reviewed annually by the council, or at any time at the request of the board. The formulary list may not go beyond the scope of prescription medicines and medical devices covered by approved naturopathic medical education and training and existing naturopathic medical formularies, or board-approved continuing education. The naturopathic medical formulary shall not include medicines and devices that are inconsistent with the training provided by approved naturopathic medical colleges. Nothing herein shall allow a naturopathic physician to dispense, administer or prescribe any prescription drug as defined in section 54-1705(3~~6~~7), Idaho Code, or medical device unless such prescription drug or medical device is specifically included in the naturopathic medical formulary.