American College of Emergency Physicians®

TAKE HOME MEDS: MODEL LEGISLATION

PURPOSE

This toolkit supports state-level legislative and regulatory approaches to allow for take home medication post-discharge. This is useful for patients receiving multidose medication. Medications include over-the-counter or prescription pain relievers, short-course antibiotics for localized infections, anti-nausea medication, respiratory inhalers, and specialized rescue kits. California (AB 447, 2025) and Illinois (SB 579, 2021) were successful in passing legislation on dispensing medication at discharge. Pennsylvania (HB 446, 2026) aims to pass similar legislation.

LEGISLATIVE APPROACH

Definitions:

- **Facility-provided medication:** A drug product intended for use by a single patient for a clinical condition requiring treatment during an inpatient or observation hospital episode of care and outpatient hospital encounters such as emergency department visits and ambulatory surgical facility encounters.
- **Multi-dose drug product:** A drug product intended for use by a single patient for a clinical condition that includes more than one dose in a single container or dispenser. Examples may include, but are not limited to, eye drops, topical treatments, and inhalers.
- **Unused medication:** The remaining portion of medication from a multi-dose drug product that would otherwise be disposed of upon conclusion of the episode of care.
- **Prescriber:** A person that is licensed to otherwise prescribe and administer a medication in the course of their professional medical practice in this state/commonwealth.

A facility-provided medication may be prescribed for treatment if the following conditions are met:

- A licensed prescriber determines that offering the medication is required to continue treatment of the patient's medical condition upon completion of the medical encounter.
- A licensed prescriber dispenses the drug, or orders the dispensation of the drug.
- The licensed prescriber or parent institution ensures that the drug is labelled and contains the same drug information used during institutional administration.
- The licensed prescriber ensures written instructions are provided regarding the facility-provided medication's proper use and administration for the remaining extent of treatment, in accordance with state regulations or statute.
- The licensed prescriber is responsible for counseling the patient on the proper use and administration, thereby waiving (fulfilling?) any pharmacist counseling requirements.
- The remaining portion of the unused medication from the multi-dose drug product shall be offered to the patient at no additional charge beyond what is charged for the initial dose(s) and administration during the medical encounter.

LEGISLATIVE EXAMPLES (BILL TEXT)

CALIFORNIA AB 447

The people of the State of California do enact as follows:

SECTION 1. Section 4068 of the Business and Professions Code is amended to read:

4068. (a) Notwithstanding any provision of this chapter, chapter, except as provided in subdivision (b), a prescriber may dispense a dangerous drug, including a controlled substance, to an emergency room patient if all of the following apply:

(1) The hospital pharmacy is closed and there is no pharmacist available in the hospital.

(2) The dangerous drug is acquired by the hospital pharmacy.

(3) The dispensing information is recorded and provided to the pharmacy when the pharmacy reopens.

(4) The hospital pharmacy retains the dispensing information and, if the drug is a schedule II, schedule III, or schedule IV controlled substance, reports the dispensing information to the Department of Justice pursuant to Section 11165 of the Health and Safety Code.

(5) The prescriber determines that it is in the best interest of the patient that a particular drug regimen be immediately commenced or continued, and the prescriber reasonably believes that a pharmacy located outside the hospital is not available and accessible at the time of dispensing to the patient.

(6) The quantity of drugs dispensed to any patient pursuant to this section are limited to that amount necessary to maintain uninterrupted therapy during the period when pharmacy services outside the hospital are not readily available or accessible, but shall not exceed a 72-hour supply.

(7) The prescriber shall ensure that the label on the drug contains all the information required by Section 4076.

(b) Notwithstanding any provision of this chapter, including subdivision (a), a prescriber may dispense an unused portion of a dangerous drug acquired by the hospital pharmacy to an emergency room patient upon discharge under the following conditions:

(1) The dangerous drug is not a controlled substance.

(2) The dangerous drug has been ordered and administered to the emergency room patient.

(3) Dispensing the unused portion of the dangerous drug is required to continue treatment of the emergency room patient.

(c) The prescriber shall be responsible for any error or omission related to the drugs dispensed.

ILLINOIS SB 579

An act concerning health.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The University of Illinois Hospital Act is amended by adding Section 8d as follows: (110 ILCS 330/8d new)

Sec. 8d. Facility-provided medication upon discharge.

(a) The General Assembly finds that this Section is necessary for the immediate preservation of the public peace, health, and safety.

(b) In this Section, "facility-provided medication" has the same meaning as provided under Section 15.10 of the Pharmacy Practice Act.

(c) When a facility-provided medication is ordered at least 24 hours in advance for surgical procedures and is administered to a patient at the University of Illinois Hospital, any unused portion of the facility-provided medication must be offered to the patient upon discharge when it is required for continuing treatment.

(d) A facility-provided medication shall be labeled consistent with labeling requirements under Section 22 of the Pharmacy Practice Act.

(e) If the facility-provided medication is used in an operating room or emergency department setting, the prescriber is responsible for counseling the patient on its proper use and administration and the requirement of pharmacist counseling is waived.

Section 10. The Ambulatory Surgical Treatment Center Act is amended by adding Section 7d as follows: (210 ILCS 5/7d new)

Sec. 7d. Facility-provided medication upon discharge.

(a) The General Assembly finds that this Section is necessary for the immediate preservation of the public peace, health, and safety.

(b) In this Section, "facility-provided medication" has the same meaning as provided under Section 15.10 of the Pharmacy Practice Act.

(c) When a facility-provided medication is ordered at least 24 hours in advance for surgical procedures and is administered to a patient at a facility licensed under this Act, any unused portion of the facility-provided medication must be offered to the patient upon discharge when it is required for continuing treatment.

(d) A facility-provided medication shall be labeled consistent with labeling requirements under Section 22 of the Pharmacy Practice Act.

(e) If the facility-provided medication is used in an operating room setting, the prescriber is responsible for counseling the patient on its proper use and administration and the requirement of pharmacist counseling is waived.

Section 15. The Hospital Licensing Act is amended by adding Section 6.28 as follows: (210 ILCS 85/6.28 new)

Sec. 6.28. Facility-provided medication upon discharge.

(a) The General Assembly finds that this Section is necessary for the immediate preservation of the public peace, health, and safety.

(b) In this Section, "facility-provided medication" has the same meaning as provided under Section 15.10 of the Pharmacy Practice Act.

(c) When a facility-provided medication is ordered at least 24 hours in advance for surgical procedures and is administered to a patient at a hospital licensed under this Act, any unused portion of the facility-provided medication must be offered to the patient upon discharge when it is required for continuing treatment.

(d) A facility-provided medication shall be labeled consistent with labeling requirements under Section 22 of the Pharmacy Practice Act.

(e) If the facility-provided medication is used in an operating room or emergency department setting, the prescriber is responsible for counseling the patient on its proper use and administration and the requirement of pharmacist counseling is waived.

Section 20. The Pharmacy Practice Act is amended by adding Section 15.10 as follows: (225 ILCS 85/15.10 new)

Sec. 15.10. Facility-provided medication upon discharge.

(a) The General Assembly finds that this Section is necessary for the immediate preservation of the public peace, health, and safety.

(b) In this Section, "facility-provided medication" means any topical antibiotic, anti-inflammatory, dilation, or glaucoma drop or ointment.

(c) When a facility-provided medication is ordered at least 24 hours in advance for a surgical procedure and is administered to a patient at the facility, any unused portion of the facility-provided medication must be offered to the patient upon discharge when it is required for continuing treatment.

(d) A facility-provided medication shall be labeled consistent with labeling requirements under Section 22.

(e) If the facility-provided medication is used in an operating room or emergency department setting, the prescriber is responsible for counseling the patient on its proper use and administration and the requirement of pharmacist counseling is waived.

Section 99. Effective date. This Act takes effect July 1, 2021.

PENNSYLVANIA HB 446

Text as amended (Note: this bill is still being considered by the legislature as of August 1, 2026.)

DRAFTING NOTES:

Liability protection: A prescriber, hospital or ambulatory surgical facility acting in good faith and in accordance with this section shall not be held civilly or administratively liable for any injury or harm resulting from a patient's misuse, nonadherence or failure to follow discharge instructions related to a facility-provided medication, unless the injury or harm results from gross negligence or willful misconduct.

Regulatory Approach

- **Drugs in the emergency department:** Drugs maintained in the emergency department are for use at the discretion of licensed prescribers in the emergency department. **These drugs are to be administered or dispensed only to emergency department patients.**
- **Accountability:** A system of drug control and accountability must be in place in participating emergency departments. The participating hospital/health system is responsible for identifying the nature and type of drugs needed to meet the immediate needs of emergency department patients, and administer or dispense these drugs in accordance with the system.
- **Drug dispensing:** In those facilities with 24-hour pharmacy services, only a pharmacist or licensed prescriber may dispense any drugs to an emergency department patient. This rule shall apply to any facility located in an area of the state where 24-hour outpatient or 24-hour on-call pharmacy services are not available within [XX] miles of the hospital, and at which the facility is without 24-hour outpatient pharmacy services.
- **Documentation:** The accuracy and labeling of prepackaged drugs and dispensed drugs from the emergency department must be ensured and maintained.