on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SUBCHAPTER 42B - LICENSE TO PRACTICE OPTOMETRY

SECTION .0300 - ANNUAL LICENSE RENEWAL

21 NCAC 42B .0304 APPLICATION FOR LICENSE RENEWAL

The application for license renewal shall show the licensee's full name, the serial number of his or her license, the address of each location in which he or she practices, the county in which each such practice is located, licensee's contact information, and questions about events or other facts which could impact his or her maintenance of licensure. ~~whether the licensee has been certified to prescribe and use pharmaceutical agents.~~ The application shall be available through the licensee's portal on the Board's website ~~mailed to each licensed optometrist at his address of record~~ on or before November 15 of each year preceding the date on which the application and the fees are due.

Authority G.S. 90-117.5; 90-118.10.

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CHAPTER 46 – BOARD OF PHARMACY

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .1821 and amend the rule cited as 21 NCAC 46 .1616.*

Link to agency website pursuant to G.S. 150B-19.1(c): *www.ncbop.org/rulemakings.htm*

Proposed Effective Date: *September 1, 2023*

Public Hearing:
Date: *June 13, 2023*
Time: *9:00 a.m.*
Location: *North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, North Carolina 27517.*
Reason for Proposed Action: *The Board of Pharmacy proposes to adopt a rule permitting pharmacies to employ certain direct to patient systems, which are technologies that dispense drugs directly to patients. The proposed rule contains provisions to allow pharmacies to comply with the laws governing dispensing drugs, devices, or medical equipment while using these systems. The proposed rule further contains provisions that would ensure that the systems can be used safely and securely, that required records are maintained, that the home pharmacy can adequately supervise and service these systems, and that patients may use these systems while also receiving information, safeguards and counseling that they need to use their drugs, devices, and medical equipment safely. There is an accompanying proposed change to the Board of Pharmacy's limited service permit rules to provide for permitting of systems that a pharmacy may place in a location other than the home pharmacy's facility.*

Comments may be submitted to: *Jay Campbell, 6015 Farrington Rd Ste 201, Chapel Hill, NC 27517; email ncboprulemaking@ncbop.org*

Comment period ends: *June 16, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SECTION .1600 - LICENSES AND PERMITS

21 NCAC 46 .1616 LIMITED SERVICE PERMITS

(a) The following pharmacy practice locations are eligible to apply for "limited service permits" whose operations are modified by the provisions set forth in this Rule:

(1) auxiliary medication inventories permitted and operating in health care facilities pursuant to Rule .1414(d) of this Chapter;
(2) automated dispensing or drug supply devices permitted and operating in health care facilities pursuant to Rule .1419 of this Chapter;
(3) direct to patient systems that are not located at the home pharmacy's facility pursuant to Rule .1821 of this Chapter;

~~(3)~~(4) facilities where drugs are dispensed only by nurse practitioners or physician assistants pursuant to Section .1700 of this Chapter;

~~(4)~~(5) county health departments or other governmental entities providing local health services under G.S. 130A-34 where drugs are dispensed only by registered nurses and only pursuant to G.S. 90-85.34A and Section .2400 of this Chapter;

~~(5)~~(6) county health departments or other governmental entities providing local health services under G.S. 130A-34 that engage in dispensing beyond that set out in G.S. 90-85.34A and Section .2400 of this Chapter;

~~(6)~~(7) free clinics, as defined in G.S. 90-85.44(a)(6); or

~~(7)~~(8) critical access hospitals, as defined in G.S. 131E-76.

(b) A pharmacist-manager for a limited service permit may designate one assistant pharmacist-manager but is not required to do so. The assistant pharmacist-manager shall be responsible for exercising all of the responsibilities of a pharmacist-manager when the assistant pharmacist-manager is present and the pharmacist-manager is not present at the limited service permit. If the pharmacist-manager chooses to designate an assistant pharmacist-manager, the pharmacist-manager shall notify the Board on the limited service permit application and, in writing, within 15 days of any change in the designation. Notwithstanding the pharmacist-manager's designation of an assistant pharmacist-manager, the pharmacist-manager shall be responsible for ensuring the pharmacy's compliance with all statutes, rules, and standards at all times.

(c) For limited service permits, the pharmacist-manager attendance requirements set out in Rule .2502(b) of this Chapter are modified only as set forth herein:

(1) For limited service permits described in Subparagraphs ~~(a)(1) and~~ (a)(1), (2) and (3) of this Rule, either the pharmacist-manager or the assistant pharmacist-manager must perform an in-person, on-site visit at least once per calendar quarter to inspect the permit, review the operations of the permit with the persons involved in accessing them, and ensure that the permits are operated in compliance with all applicable State and federal laws.

(2) For limited service permits described in Subparagraphs (a)(4) and (5)~~(a)(3) and (4)~~ of this Rule, either the pharmacist-manager or the assistant pharmacist-manager must perform an in-person, on-site visit at least once per week to inspect the permit, review the operations of the permit with the persons involved in dispensing, and ensure that the permits are operated in compliance with all applicable State and federal laws.

(3) For limited service permits described in Subparagraphs ~~(a)(5), (6), and~~ (a)(6), (7) and (8) of this Rule, either the pharmacist-manager or the assistant pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half of the hours the pharmacy is open or 20 hours a week, whichever is less. For the limited service permits described in Subparagraphs (a)(5) and (6) of this Rule, a licensed pharmacist must be present when the pharmacy is open as described in Rule .2502(e) of this Chapter. For the limited service permits described in Subparagraph (a)(7) of this Rule, the limited service permit may operate in the absence of a pharmacist only as set out in Rule .1413 of this Chapter.

(4) The limited service permit may name a temporary pharmacist-manager or assistant pharmacist-manager for a period not to exceed 90 days from the departure date of the previous pharmacist-manager or assistant pharmacist-manager. The temporary pharmacist-manager or assistant pharmacist-manager must accept the responsibilities of that position and must be present as set forth in this Rule. A limited service permit may not operate for a period of more than 30 days without a pharmacist employed or otherwise engaged as a permanent or temporary pharmacist-manager who has signed the permit for that pharmacy.

(d) A person may serve as the pharmacist-manager or the assistant pharmacist-manager for multiple limited service permits, and may serve as the pharmacist-manager or assistant pharmacist-manager for limited service permits in addition to serving as the pharmacist-manager for a maximum of one permit other than a limited service permit. A person may serve multiple limited permits only if that person is able to fulfill all of that person's duties under State and federal law.

(e) Other than as set forth in this Rule, limited service permits and their personnel must follow all requirements of State and federal law. This Rule does not replace or modify the requirements that the pharmacist-manager provide oversight and supervision as provided elsewhere in this Chapter.

Authority G.S. 90-18.1(c); 90-18.2; 90-85.6; 90-85.21; 90-85.32; 90-85.33; 90-85.34.

SECTION .1800 - PRESCRIPTIONS

21 NCAC 46 .1821 DIRECT-TO-PATIENT DELIVERY SYSTEMS

(a) This Rule sets out the requirements under which pharmacies may utilize "direct-to-patient" or ("DTP") delivery systems for dispensing in the State of North Carolina.

(b) Definitions.

(1) "Direct to patient system" or "DTP system" means any delivery system through which a pharmacy dispenses drugs, devices or medical equipment to a patient through any means other than:

(A) in-person dispensing to a patient by pharmacy personnel inside a pharmacy,

(B) in-person dispensing by delivery to a patient's residence or to a health care provider treating that patient,

(C) shipping through common carrier to a patient or to a health care provider treating that patient, or

(D) the use of an automated dispensing device by a health care facility pharmacy that is governed by Rule .1419 of this Chapter.

Except as provided in this Rule or one of the exceptions set out above, no licensee or permittee shall participate in any arrangement whereby prescriptions may be left at, picked up from, accepted by, or delivered to any other place. The only DTP systems allowed are "lockers" and "kiosks" as defined herein.

(2) The "home pharmacy" means the pharmacy responsible for dispensing drugs, devices or medical equipment through a DTP system.

(3) A "locker" means a secure container in which pharmacy personnel place completed and labeled patient-specific drugs, devices, or medical equipment to be picked up by the patient.

(4) A "kiosk" means an automated system that is capable of filling, labeling and dispensing drugs, devices, or medical equipment to be dispensed to a patient.

(c) Any DTP system located within the State of North Carolina (whether a locker or a kiosk) must meet the following requirements:

(1) Before any drugs, devices, or medical equipment may be dispensed from a DTP system, the home pharmacy must be permitted by the Board. In addition, before any drugs, devices, or medical equipment may be dispensed from the DTP system, the DTP system must hold a limited service permit if it is not located at the home pharmacy's permitted facility.

(2) The home pharmacy must notify the Board, in writing, prior to using any DTP system, including the location of the DTP system and the licensed pharmacist(s) responsible for the DTP system. The home pharmacy must notify the Board prior to moving the DTP system and must secure a new limited service permit, if one is required by Subparagraph (c)(1) of this Rule, before operating the DTP system in the new location. The home pharmacy must notify the Board within 10 days after discontinuing the use of any DTP system.

(3) The home pharmacy must own or otherwise have the legal right to sole use of the DTP system.

(4) Any DTP system must be 60 miles or fewer from the home pharmacy (via the shortest surface street route) in order to facilitate supervision of the DTP system.

(5) A DTP system may be placed in the office of a prescriber only if the DTP system is under the ownership and control of the home pharmacy, which is responsible for compliance with all laws regarding the DTP system. The prescriber must offer patients a choice of pharmacy, and neither the home pharmacy nor the prescriber may compensate the other for the placement of the DTP system or for any prescriptions filled by the DTP system.

(6) The DTP system must be secured to prohibit access by unauthorized personnel and to maintain confidentiality of patient information. The DTP system must be under the continuous supervision of a pharmacist employed by the home pharmacy. To qualify as continuous supervision, the pharmacist is not required to be physically present at the site of the DTP system if the pharmacist electronically supervises the DTP system.

(7) The DTP system must display the home pharmacy's name, address, phone number, North Carolina permit number, and the name of the home pharmacy's pharmacist-manager, as well as (where applicable) the limited service permit number for the DTP system and the name of the limited service permit's pharmacist-manager and assistant pharmacist-manager, if any.

(8) The home pharmacy must ensure that there is video surveillance of the DTP system and any persons using or accessing the DTP system. It must maintain any recordings for a minimum of 90 days.

(9) The home pharmacy shall develop, maintain, and follow a manual of policies and procedures that includes policies and procedures for:

(A) Maintaining the security of the DTP system and the drugs, devices, and medical equipment within the DTP system.

(B) Determining and applying criteria regarding which drugs, devices, and medical equipment are appropriate for placement in the DTP system and which patients are eligible to use the DTP system.

(C) Maintaining any drugs, devices, and medical equipment at temperatures, humidities and other environmental conditions to ensure that they do not become adulterated under G.S. 106-133 and to ensure that they are transported and stored in accordance

with manufacturer's specifications, if any, for those items.

(D) Removing outdated drugs, devices, and medical equipment from the DTP system as set forth in Subparagraph (c)(11) of this Rule on a regular basis so that patients do not receive drugs, devices, and medical equipment with a beyond use date during the period when the patient is to use the item.

(E) Describing the assignment of responsibilities to, and training of, pharmacy personnel regarding the maintenance and filling procedures for the DTP system.

(F) Orienting participating patients on use of the DTP system; notifying patients when expected drugs, devices, or medical equipment are not available in the DTP system or when the DTP system is not functioning and notifying them of alternate methods for having those prescriptions filled; and ensuring that patient use of the DTP system does not interfere with the delivery of drugs, devices, and medical equipment to patients.

(G) Inspecting the DTP system during each required inspection.

This written manual of policies and procedures shall be reviewed and updated, if needed, annually.

(10) The home pharmacy shall comply with any federal and state controlled substance laws and rules, including but not limited to registrations that may be required for any DTP systems, before any controlled substances are dispensed from any DTP systems. The home pharmacy must comply with G.S. 90-106.1 in dispensing any drugs covered by that statute from a DTP system, and must visually confirm that the person seeking the dispensation is the same as the person on the photographic identification provided.

(11) Drugs, devices, and medical equipment may be stocked in, or removed from, a DTP system in the State of North Carolina only by pharmacy personnel who are licensed with this Board as pharmacists or registered with this Board as technicians or pharmacy interns. The home pharmacy must maintain records of any access to the DTP system by pharmacy personnel stocking or otherwise accessing the DTP system.

(12) The home pharmacy may use DTP system only with prior approval of the patient.

(13) The dispensing pharmacist on any drugs, devices, or medical equipment dispensed from a DTP system in the State of North Carolina must be licensed with this Board.

(14) Before a prescription is dispensed from the DTP system, the dispensing pharmacist at the home pharmacy must verify each prescription and must conduct a drug utilization review and otherwise assure that the drug, device, or medical equipment may safely be dispensed to the patient.

(15) The labels of any drugs, devices, and medical equipment dispensed from a DTP system must be labeled for the individual patient and contain all information required by law, including but not limited to having the dispensing pharmacist identified on the label.

(16) The home pharmacy must create and maintain all required records for any drugs, devices, and medical equipment dispensed in a DTP system. Any kiosk must be connected to the home pharmacy's automated data processing system, and any drugs, devices, or medical equipment dispensed from any locker must be recorded in the home pharmacy's recordkeeping system. The records must reflect that the drugs, devices, and medical equipment were dispensed by the DTP system, and the recordkeeping system must be capable of producing a record of all drugs, devices, and medical equipment dispensed from the DTP system.

(17) The DTP system must have a means to identify each patient and release only that patient's prescription drugs, devices, or medical equipment to the patient. In the event that the DTP system releases a patient's drugs to the agent for a patient, the DTP system must have a means to ensure that the agent is authorized to receive drugs, devices, or medical equipment for that patient.

(18) The DTP system must offer to counsel a patient as required by Rule .2504 of this Chapter and must provide the ability for the patient to have an immediate real-time consultation with a pharmacist licensed by this Board and employed by the home pharmacy who has access to all of the home pharmacy's information related to the patient. The communication link shall protect the confidentiality of the patient's information. The home pharmacy must check the communication link at least daily and the DTP system must be closed if the link malfunctions or if a licensed pharmacist is not available from the home pharmacy for counseling, unless a licensed pharmacist is physically present at the DTP system. A pharmacist who is responsible for counseling may not provide that service for more than three sites simultaneously. In the event that the DTP system is placed in the same physical space as the dispensing area of the home pharmacy, this provision may be satisfied during the time that the pharmacy is open by

informing the patient how to receive counseling from a pharmacist in the home pharmacy. If the dispensing pharmacist has determined that the patient should receive counseling before the prescription is dispensed, the DTP system must provide the ability for the pharmacist to force counseling before the DTP system dispenses the drug, device, or medical equipment.

(19) The home pharmacy shall record and review any incident involving a complaint, delivery error, or omission regarding a DTP as part of the home pharmacy's quality assurance program.

(20) Drugs, devices, or medical equipment that are not picked up by a patient may be returned to stock under the same conditions as if the item had been maintained in the pharmacy, as long as the requirements of this Rule for operating the DTP system have been followed.

(d) With respect to drugs, devices, or medical equipment dispensed through a kiosk, the following additional requirements shall be met:

(1) The dispensing pharmacist shall electronically compare via video link the stock bottle, drug dispensed, the strength, and the beyond-use date. The dispensing pharmacist must verify the entire label for accuracy on the video link.

(2) The kiosk shall utilize a barcode system that prints the barcode of the stock bottle or other packaging on the label of the dispensed drug, device, or medical equipment. If the stock bottle or other packaging does not have a barcode, the home pharmacy shall create one. Pharmacy personnel shall scan both the stock bottle or other packaging and the label of the dispensed drug, device, or medical equipment to verify that the item dispensed is the same as the one in the stock bottle or other packaging for each prescription dispensed.

(3) Drugs, devices, or medical equipment dispensed by the kiosk may be packaged only by a licensed manufacturer or repackager, or prepackaged by the home pharmacy in compliance with the Pharmacy Practice Act and its rules.

(4) The home pharmacy shall keep a perpetual inventory of controlled substances that are received and dispensed from each kiosk.

(5) The home pharmacy may not dispense compounded medications through a kiosk.

(6) The kiosk shall not accept returns of drugs, devices and medical equipment from patients.

(e) This Rule does not alter the method by which patients or providers may transmit prescriptions to the home pharmacy. Prescriptions may not be collected by the home pharmacy through the DTP system.

Authority G.S. 90-85.6; 90-85.15A; 90-85.21; 90-85.32.