

New California Law Prohibits Chain Community Pharmacy Productivity Quotas for Pharmacists and Pharmacy Technicians

Healthcare Alert | 5 min read

Oct 27, 2021

Last year, The New York Times published an article titled “[How Chaos At Chain Pharmacies Is Putting Patients At Risk](#).” The article described how many pharmacists in large chain pharmacies “struggle to fill prescriptions, give flu shots, tend the drive-through, answer phones, work the register, counsel patients and call doctors and insurance companies . . . all the while racing to meet corporate performance metrics that they characterized as unreasonable and unsafe in an industry squeezed to do more with less.” Recent documents and data obtained by investigative reporters for an NBC News article entitled “[Overworked, Understaffed: Pharmacists Say Industry In Crisis Puts Patient Safety At Risk](#)” also alleges that large, publicly-traded pharmacy chains impose performance quotas on licensed pharmacists and pharmacy technicians that place at risk the health and well-being of patients. For itself, the California Pharmacy Association has stated that “benchmarks and quotas are not conducive to the clinical practice of pharmacy and may actually inhibit a pharmacist’s care for their patients.”

California Senate Bill 362

Productivity Quota Prohibitions. Signed into law on September 27, 2021, and effective January 1, 2022, Senate Bill 362 amends [California Business and Professions Code Section 4113.7](#) to prohibit chain community pharmacies from establishing performance quotas related to the duties for which a pharmacist or pharmacy technician license is required. For purposes of the new law, a “quota” is a fixed number or formula related to the duties for which a pharmacist or pharmacy technician license is required, against which the chain community pharmacy or its agent measures or evaluates the number of times either an individual pharmacist or pharmacy technician performs tasks or provides services while on duty. “Chain community pharmacy” is defined as a chain of 75 or more pharmacies in California under the same ownership.

Prohibition on Communication of Quota Requirements. Effective January 1, 2022, Senate Bill 362 amends [California Business and Professions Code Section 4317](#) to prohibit chain community pharmacies from communicating the existence of quotas to pharmacists or pharmacy technicians who are its employees or with whom it contracts, through employees, contractors, or third parties.

“Quota” includes a fixed number or formula related to any of the following:

- Prescriptions filled.
- Services rendered to patients.
- Programs offered to patients.
- Revenue obtained.

Permissible Performance Evaluation Activities. The new law does not prohibit a chain community pharmacy from establishing policies and procedures that assist in assessing the competency and performance of a pharmacist or pharmacy technician in providing care to patients if the measurements used are not, or do not include, quotas.

A “quota” does not mean any of the following:

- A measurement of the revenue earned by a particular licensed chain community pharmacy not calculated in relation to, or measured by, the tasks performed, or services provided by, individual pharmacists or pharmacy technicians;
- Any evaluation or measurement of the competence, performance, or quality of care provided to patients of a pharmacist or pharmacy technician if the evaluation does not use quotas; or
- Any performance metric required by state or federal regulators that does not use quotas.

Corporate Practice of Pharmacy – Conflict of Interest?

Productivity Quotas. A productivity quota is **a set amount of goods a particular division, department or individual is expected to produce in a prescribed amount of time**. This term most often applies in the manufacturing sector where employees must commonly meet prescribed quotas to retain their jobs or to gain promotions. The use of productivity quotas is common in most industries; however, they may present a conflict of interest when utilized in a pharmacy environment because pharmacists are supposed to make medical decisions based on patient needs and not be forced to meet corporate benchmarks that conflict with their ethical standards and training.

Corporate Practice of Pharmacy. Existing law prohibits most categories of healthcare providers from being employed by corporations not owned entirely by licensees. Pharmacists are one of the few categories of licensed healthcare providers who are often directly employed by large publicly traded corporations. Pharmacists and pharmacy technicians often find themselves in the position of being forced to meet profit-driven, corporation-

imposed performance quotas that interfere with professional practice and judgment. This can run counter to their obligation and efforts to provide the kind of conscientious patient care that should be the sole focus of all licensed healthcare professionals.

Compliance Steps to be Taken by Pharmacies

The California Board of Pharmacy board may take an enforcement action against a chain community pharmacy, as defined in subdivision (c) of Business and Professions Code Section 4001, that violates Business and Professions Code Section 4113.7 **unless, by clear and convincing evidence, the chain community pharmacy demonstrates that the violation was contrary to its policy.** The only way that a chain community pharmacy can demonstrate that a violation is contrary to its policy is for the chain community pharmacy to have an effective compliance plan that addresses productivity quotas, and which includes policies and procedures that prohibit productivity quotas.

It is our understanding that the California Board of Pharmacy is already in the process of developing an education program for pharmacists and technicians regarding Business and Professions Code Section 4113.7, as well as a process for pharmacists and pharmacy technicians to file complaints regarding violations of the productivity prohibition.

Compliance Programs. Pharmacies should develop or revise their corporate compliance programs to incorporate the new prohibition on pharmacist and pharmacy technician productivity quotas and develop comprehensive policies and procedures (which include whistleblower protections) related thereto. Compliance Program policies and procedures should encourage employees to report pharmacy store managers who impose prohibited quotas on pharmacists or pharmacy technicians. Pharmacies should also educate and train their staff on the new and updated compliance program requirements and related policies and procedures.

Human Resource Policies. Pharmacies should review and revise pharmacist and pharmacy technician employee annual reviews and/or competency and performance evaluations that utilize criteria based on prohibited quotas. Pharmacist and pharmacy technician employees should be notified of the change in performance evaluation criteria.

SB 362's Impact on all Chain Store Pharmacies. All owners of multiple pharmacies should take note of the potential “standard of care” implications of the new law that is applicable to chain store pharmacies with 75 or more locations in California, and should consult with competent pharmacy law counsel to review and evaluate existing pharmacy productivity quotas to determine whether or not it would be appropriate to discontinue such; or alternatively modify productivity quotas to ensure that such are reasonable, appropriate, and not prohibited by the [California Pharmacy Practice Act](#).

[Hinshaw health care law attorneys](#) have significant experience in advising [Federally Qualified Health Centers](#) on licensure and federal qualification, nonprofit governance, federal grants, and procurement law,

Section 330 Public Health Service Act compliance, the Section 340B pharmacy discount program, mergers, acquisitions, joint ventures, affiliations, tax-exempt bond financing, tax-exempt organization regulation and policy, political activity and federal election campaign law, business transactions, general contracts and agreements, health care regulatory, fraud and abuse, data privacy and cyber security, reimbursement and operational issues.

Related Capabilities

Life Sciences & Pharmaceuticals