February 12, 2014

Senator Kathy Campbell, Chair
Health and Human Services Committee
P.O. Box 94604
Lincoln, NE 68509-4604

RE: LB 1017

Dear Senator Campbell and members of the Health and Human Services Committee:

LB 1017 proposes changes in the Pharmacy Practice Act. Statutes relating to poisons, medicinal substances, and prescription drugs and devices are being transferred to create the Prescription Drug Safety Act, which pertains to pharmacists and prescribers. The Department of Health and Human Services, Division of Public Health, has reviewed LB 1017 and has the following technical concerns:

- In Section 22, page 9, line 10, the term "dispensing practitioner" is used. This term and any other reference to this term throughout the bill should be replaced with "a practitioner holding a pharmacy license under 38-2850(2)."

- In Section 29, language should be added to allow a pharmacy technician to receive refill authorizations which is something pharmacy technicians are currently allowed to do.

- In Section 33, the provision for allowing chart orders in long-term care facilities does not specify that chart orders are not allowed for controlled substances. Federal law requires prescriptions for controlled substances in long-term care facilities, and it would be clearer to state this requirement.

- Section 34 changes the definition of compounding to require compliance with the standards of chapters 795 and 797 of the United States Pharmacopeia (USP). USP considers reconstitution to be compounding, and compounding is included in the practice of pharmacy. This addition may result in the unintended consequence of preventing nurses from reconstituting medications for administration because it would be considered as the practice of pharmacy.

- Section 43 has removed physician assistants from being authorized to hold a dispensing practitioner pharmacy license. If this change is retained, physician assistants should be added to 38-2850(5) so that they are at least allowed to dispense sample medications provided by the manufacturer at no charge to the patient.

- Section 49 on page 26, line 10, appears to be a clarification between a fax transmission and an electronic transmission, but the same clarification needs to be made in the definition of electronic transmission found in Neb. Rev. Stat. 38-2821 which currently includes computer-to-fax transmission.

- Section 49 on page 26, line 17, allows an unsigned medical order to be treated the same as an oral medical order; however, in the same section on page 27, lines 9 through 11, the language requires that medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature or a digital signature. This appears to be a contradiction. Allowing an unsigned medical order in this manner broadens what orders can be accepted without a signature. This opens up the possibility for fraud and diversion. The language was previously more limited and applied to faxes of unsigned orders from long-term care facilities.

- Section 56 requires a nuclear pharmacist to manage a pharmacy or hospital pharmacy that provides radiopharmaceutical services; however, there is no definition for a "nuclear pharmacist." Such a definition should be added.

- Section 58 should be separated into two sections – the first to include what a chart order must contain, and the second to include who may communicate information to pharmacists or pharmacist interns. Also, the second section should include language that allows a pharmacy technician to receive refill authorizations which is something pharmacy technicians are currently allowed to do. These changes would make Section 58 in the Pharmacy Practice Act consistent with Section 29 in the Prescription Drug Safety Act.

Thank you for your consideration of the Department's technical concerns.

Sincerely,

Joseph M. Acierno, M.D., J.D.
Chief Medical Officer
Director, Division of Public Health

Cc: Senator Bob Krist