SENATE BILL 488

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Dede Feldman

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PRESCRIPTION DRUGS; ESTABLISHING A THERAPEUTIC EXCHANGE PROGRAM; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-15-3 NMSA 1978 (being Laws 1974, Chapter 91, Section 3, as amended) is amended to read:

"10-15-3. INVALID ACTIONS--STANDING.--

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978, except those discussions and decisions made pursuant to Paragraph (11) of Subsection C of Section 26-3-5 NMSA 1978. Every resolution, rule, regulation, ordinance or

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action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts; provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it. A public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation occurred.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs. A public body defendant that prevails

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in a court action brought under this section shall be awarded its reasonable attorney fees from the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings."

Section 2. Section 26-3-1 NMSA 1978 (being Laws 1976, Chapter 60, Section 2) is amended to read:

"26-3-1. SHORT TITLE.--[~~Sections 54-6-28.1 through 54-6-28.3 NMSA 1953~~] Chapter 26, Article 3 NMSA 1978 may be cited as the "Drug Product Selection Act"."

Section 3. Section 26-3-3 NMSA 1978 (being Laws 1976, Chapter 60, Section 4, as amended) is amended to read:

"26-3-3. DRUG PRODUCT SELECTION PERMITTED--CONDITIONS--EXCEPTION FOR PROHIBITION--LABELING.--

A. Upon receipt of a prescription written by a licensed practitioner who may prescribe drugs for a drug for which one or more multiple-source drugs are recognized, listed as final determinations and published in the federal register by the federal department of health and human services, a pharmacist may dispense any one of the drugs that satisfies the final determinations so recognized and listed by the federal department of health and human services and is sold at a lower cost than the drug [~~or drugs~~] listed in the prescription.

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B. Upon receipt of a prescription written by a licensed practitioner for a drug, a pharmacist may dispense:

(1) a generic drug that [~~appears on~~] has been approved by the federal food and drug [~~administration's approved prescription drug products with therapeutic equivalence evaluation list, as supplemented a pharmacist may dispense any of the~~] administration for substitution; or

(2) a therapeutically equivalent [~~drugs that appears on that list and which is lower in cost than the drug or drugs listed in the prescription~~] drug, provided that the therapeutically equivalent drug is approved for exchange by the board.

C. Drug product selection shall be permitted only under circumstances and conditions set forth in Subsections A and B of this section unless the licensed practitioner prescribing prohibits drug product selection [~~A licensed practitioner shall prohibit drug product selection by writing with his hand~~] by communicating the words "no substitution", [~~or~~] the diminution "no sub" or "dispense as written" on the face of a written prescription or by phone or electronically.

D. If drug product selection occurs as permitted in Subsections A and B of this section, the pharmacist shall indicate on the label of the dispensed container the brand of drug prescribed and the name of the drug dispensed.

E. If a pharmacist changes the drug dispensed for a

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patient [~~at a point in time~~] after the drug product selection initially has occurred, [~~he~~] the pharmacist shall immediately notify [~~within seventy-two hours~~] the prescribing practitioner and the patient and identify the drug most recently dispensed.

F. A pharmacist may not select a therapeutically equivalent drug unless [~~he~~] the pharmacist passes on to the patient all savings between the net cost of the product prescribed and the product dispensed.

G. For purposes of this section, "multiple-source drug" means a drug marketed or sold by two or more manufacturers, formulators or labelers.

H. For purposes of this section [~~therapeutically equivalent~~]:

(1) "board" means the therapeutic exchange board;

(2) "generic drug" means a drug [~~products which have~~] product that has the same [~~amount of the~~] active [~~drug~~] ingredient in the same dosage form [~~which~~] that when administered can be expected to provide the same therapeutic effect as the drug prescribed; and

(3) "therapeutically equivalent drug" means a drug product that contains a different therapeutic agent than the drug prescribed, but is of the same pharmacological or therapeutic class and can be expected to have the same therapeutic effect when administered to a patient in a

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therapeutically equivalent dosage as the drug prescribed."

Section 4. A new section of the Drug Product Selection Act, Section 26-3-4 NMSA 1978, is enacted to read:

"26-3-4. [NEW MATERIAL] THERAPEUTIC EXCHANGE PROGRAM.--The department of health, in conjunction with the human services department, the New Mexico medical board, the board of pharmacy, the New Mexico state board of psychologist examiners, the board of nursing, the board of osteopathic medical examiners and the board of acupuncture and oriental medicine shall develop a therapeutic exchange program that provides pharmacists with a list of therapeutic equivalent drugs, prescription or nonprescription, that may be dispensed to a patient in lieu of the drug prescribed when medically appropriate."

Section 5. A new section of the Drug Product Selection Act, Section 26-3-5 NMSA 1978, is enacted to read:

"26-3-5. [NEW MATERIAL] THERAPEUTIC EXCHANGE BOARD--MEMBERSHIP--DUTIES.--

A. The "therapeutic exchange board" is created. The department of health shall provide administrative services to the board. The board shall be composed of nine members as follows:

(1) four physicians, none of whom are employed by or contracted with in any administrative capacity by a New Mexico medicaid provider, as follows:

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(a) the dean of the university of New Mexico school of medicine or a designee from that faculty;

(b) the chief medical officer of the department of health or designee from that staff;

(c) one physician selected by the New Mexico medical board; and

(d) one physician who is a member of a statewide association of psychiatric practitioners;

(2) three pharmacists, none of whom is employed by or contracted with in any administrative capacity by a New Mexico medicaid provider, as follows:

(a) the dean of the university of New Mexico school of pharmacy or a designee from that faculty;

(b) the chief pharmacist of the department of health or designee from that department; and

(c) a pharmacist selected by the board of pharmacy; and

(3) two practitioners licensed to prescribe drugs, as follows:

(a) one advanced practice nurse selected by the board of nursing; and

(b) one non-physician, non-pharmacist health care practitioner selected by the department of health licensed to prescribe drugs that are subject to the New Mexico Drug, Device and Cosmetic Act.

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B. Of the nine members of the therapeutic exchange board, two physicians, one pharmacist and one licensed practitioner, appointed pursuant to Paragraph (3) of Subsection A of this section, shall be appointed for one-year terms. One physician, one pharmacist and one licensed practitioner, pursuant to Paragraph (3) of Subsection A of this section, shall be appointed for two-year terms. The remaining and subsequent members shall be appointed for three-year terms.

C. The therapeutic exchange board:

(1) shall engage in drug utilization review activities, including prospective, concurrent and retrospective review to assess patterns and trends in the state;

(2) shall review pharmacoeconomic research and analyze the clinical efficacy and costs and benefits of drugs with a critical emphasis on drugs that have higher utilization patterns and trends;

(3) shall consult with specialists in the many fields of medicine that most frequently utilize various categories of drugs in their treatment modalities;

(4) shall, to the maximum extent possible, facilitate the efforts of the human services department to develop the prescription drug list required by Section 27-2-12.13 NMSA 1978;

(5) shall recommend continuing education activities and develop and help implement communication

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protocols for health care practitioners authorized to prescribe, dispense or administer prescription drugs in this state;

(6) shall develop standards and procedures for consumer access to and information about therapeutic exchange options;

(7) shall develop therapeutic exchange criteria that identify prescription or nonprescription drugs that may be used in lieu of other drugs based on evidence that demonstrates that the clinical efficacy and safety are preserved or enhanced through therapeutic exchange;

(8) may provide to a public or private entity, upon request, criteria or information regarding therapeutic exchange of drugs listed on that entity's formulary or preferred drug list;

(9) shall conduct other activities as needed to ensure optimal therapeutic and cost-effective utilization of prescription drugs by consumers;

(10) shall require pharmaceutical manufacturers to submit available pharmacoeconomic data, including chemical and cost outcomes and safety and efficacy information to the board in a standardized format to assist the board in its evaluation of prescription drug products; and

(11) may be exempted from the Open Meetings Act if and only when proprietary or nonpublished data are to be

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used in the evaluation of drug products for the therapeutic exchange program.

D. The therapeutic exchange board may contract with a national center for evidenced-based medical science to create and implement the therapeutic exchange program provided that the contractor discloses any conflict of interest and does not accept compensation for the therapeutic exchange program from a source other than the department of health or a source authorized by the department."

Section 6. A new section of the Public Assistance Act is enacted to read:

"[NEW MATERIAL] PREFERRED DRUG LIST--EFFICIENCY OF EFFORT.--

A. The preferred drug list required to be created for the medicaid program pursuant to Paragraph (1) of Subsection A of Section 27-2-12.13 NMSA 1978 and required to be utilized for all state health care programs purchasing prescription drugs pursuant to Paragraph (2) of Subsection A of that section, shall, to the maximum extent practicable, utilize the findings of the therapeutic exchange board in making its determinations for use by the medicaid program and other state prescription drug programs.

B. The department may, in creating a preferred drug list, contract for development of a preferred drug list with a national center for evidence-based medical science but shall

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not adopt as the preferred drug list or a part of the preferred drug list a list of drugs proposed or offered by a person that, directly or indirectly contracts with the department to provide services under the medicaid program."

Section 7. PER DIEM AND MILEAGE.--Members of the therapeutic exchange board may receive per diem and mileage as provided for public officers in the Per Diem and Mileage Act.

Section 8. APPROPRIATION.--Twenty-five thousand dollars ($25,000) is appropriated from the general fund to the department of health for expenditure in fiscal year 2006 to provide administrative services and per diem and mileage for the therapeutic exchange board. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

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