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HOUSE BILL 369

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Eliseo Lee Alcon

AN ACT

RELATING TO DRUGS AND COSMETICS; PROVIDING FOR THE DONATION OF
CANCER DRUGS AND MEDICAL DEVICES; ENACTING A NEW SECTION OF THE
NEW MEXICO DRUG, DEVICE AND COSMETIC ACT.

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

Section 1. A new section of the New Mexico Drug, Device
and Cosmetic Act is enacted to read:

"[NEW MATERIAL] CANCER DRUGS AND MEDICAL DEVICES
DONATION.--

A. As used in this section:

(1) "cancer drug" means a prescription drug
that is used to treat cancer or the side effects of cancer;

(2) "department" means the department of
health;

(3) "dispense" means to deliver a cancer drug

1 to an eligible patient pursuant to the lawful order of a
2 practitioner, including the administering, prescribing,
3 packaging, labeling or compounding necessary to prepare the
4 cancer drug for that delivery;

5 (4) "eligible patient" means an uninsured or
6 underinsured cancer patient who meets the eligibility criteria
7 established by rule by the board;

8 (5) "health care facility" means an
9 institution providing health care services, including a
10 hospital, clinic or other inpatient center, outpatient facility
11 or diagnostic or treatment center, that is licensed by the
12 department;

13 (6) "pharmaceutical care" means the provision
14 of drug therapy and other patient-care services related to drug
15 therapy intended to achieve definite outcomes that improve a
16 patient's quality of life, including identifying potential and
17 actual drug-related problems, resolving actual drug-related
18 problems and preventing potential drug-related problems;

19 (7) "pharmacist" means a person licensed as a
20 pharmacist pursuant to the Pharmacy Act;

21 (8) "pharmacy" means a licensed place of
22 business where drugs are compounded or dispensed and
23 pharmaceutical care is provided; and

24 (9) "program" means the cancer drug and
25 medical device repository program created in this section.

underscoring material = new
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1 B. There is hereby created the "cancer drug and
2 medical-device repository program" for the purpose of allowing
3 a cancer patient or the patient's family to donate unused
4 cancer drugs and medical devices to uninsured and underinsured
5 cancer patients in New Mexico. The program shall be
6 administered by the department. The program shall allow a
7 cancer patient or the patient's family to donate unused cancer
8 drugs or medical devices to a health care facility or pharmacy
9 that elects to participate in the program. A health care
10 facility or pharmacy that receives a donated cancer drug or
11 medical device under the program may distribute the cancer drug
12 or medical device to another eligible health care facility or
13 pharmacy for use pursuant to the program.

14 C. A pharmacist may accept and dispense cancer
15 drugs and medical devices donated pursuant to the program to
16 eligible patients if all of the following requirements are met:

17 (1) the cancer drug or medical device is in
18 its original, unopened, sealed and tamper-evident packaging or,
19 if packaged in single-unit doses, the single-unit-dose
20 packaging is unopened;

21 (2) the pharmacist has determined that the
22 cancer drug or medical device is safe for redistribution;

23 (3) the cancer drug bears an expiration date
24 that has not expired;

25 (4) the cancer drug or medical device is not

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1 adulterated or misbranded, as determined by a pharmacist; and
2 (5) the cancer drug or medical device is
3 prescribed by a practitioner for use by an eligible patient and
4 is dispensed by a pharmacist.

5 D. A cancer drug or medical device donated pursuant
6 to the program shall not be resold. A health care facility or
7 pharmacy may charge an eligible patient a handling fee to
8 receive a donated cancer drug or medical device, which fee
9 shall not exceed the amount specified in rule adopted by the
10 board.

11 E. Nothing in this section requires a health care
12 facility or pharmacy to participate in the program.

13 F. A health care facility or pharmacy that elects
14 to participate in the program shall establish eligibility
15 criteria for individuals to receive donated cancer drugs or
16 medical devices. Dispensation shall be prioritized to cancer
17 patients who are uninsured or underinsured. Dispensation to
18 other cancer patients shall be permitted if an uninsured or
19 underinsured cancer patient is not available.

20 G. The department, in consultation with the board,
21 shall adopt rules necessary for the implementation and
22 administration of the program. The rules shall include:

23 (1) requirements for health care facilities
24 and pharmacies to accept and dispense donated cancer drugs and
25 medical devices pursuant to the program, including:

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(a) eligibility criteria; and

(b) standards and procedures for a health care facility or pharmacy to accept, safely store and dispense donated cancer drugs and medical devices; and

(2) the amount of the maximum handling fee that a health care facility or pharmacy may charge for distributing or dispensing donated cancer drugs or medical devices.

H. Nothing in this section shall be construed to create or abrogate any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance or dispensing of a cancer drug or medical device, or to create any civil cause of action against a prescription drug manufacturer in addition to any liabilities that are available under applicable law."