HOUSE BILL 605

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO PRESCRIPTION DRUGS; ENACTING THE ETHICS IN PRESCRIPTION DRUG CHOICE ACT; PROHIBITING CERTAIN ACTS RELATING TO THE PRESCRIBING OF PRESCRIPTION DRUGS IN RETURN FOR MONETARY INCENTIVES; PROVIDING CIVIL PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Ethics In Prescription Drug Choice Act".

Section 2. DEFINITIONS.--As used in the Ethics In Prescription Drug Choice Act:

A. "caregiver" means:

(1) a parent or guardian of a minor patient;

(2) a relative, close friend or employee of a patient who provides in-person physical assistance to the patient; or

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(3) a person employed by another to care for a patient and who provides in-person physical assistance to the patient;

B. "chemically dissimilar prescription drug" means a prescription drug that contains one or more active ingredients that are different from those of the originally prescribed prescription drug;

C. "dispense" means to deliver a prescription drug to a patient pursuant to the lawful order of a prescribing practitioner;

D. "drug" means:

(1) an article or substance recognized in the official United States pharmacopoeia national formulary or official homeopathic pharmacopoeia of the United States or a supplement to either of them;

(2) an article or substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man;

(3) an article or substance, other than food, that is intended to affect the structure or a function of the body of an individual; or

(4) an article or substance intended for use as a component described in Paragraph (1), (2) or (3) of this subsection, but does not include a device or its component parts or accessories;

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E. "health care insurer" means a person that acts as an insurer, health maintenance organization, nonprofit health care plan, preferred provider organization, individual practice association, competitive medical plan, exclusive provider organization, integrated delivery system, independent physician-provider organization, physician hospital-provider organization, managed care services organization or prepaid dental plan and includes an employee, agent or contractor of such a person;

F. "manufacture" means the production, preparation, propagation, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling;

G. "manufacturer" means a person who manufactures and all agents of that person;

H. "patient" means an ultimate consumer of a prescription drug who obtains the prescription drug from a prescribing practitioner;

I. "person" means an individual, partnership, corporation, association, governmental agency, trust or other institution or entity;

J. "practitioner" means a physician, dentist, certified nurse-midwife or other person licensed or certified,

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to prescribe and administer drugs;

K. "prescribing practitioner" means a practitioner who prescribes a prescription drug for a patient;

L. "prescription drug" means a drug required by federal or state law to be dispensed only pursuant to a prescription; and

M. "restricted drug formulary" means a list of prescription drugs along with their formulas, uses and methods of preparation, from which list a prescribing practitioner is encouraged or required to select a specific drug to prescribe.

Section 3. UNLAWFUL SOLICITATION.--

A. No health care insurer shall receive or agree to receive, either directly or indirectly, a rebate, discount, kickback, fee, special charge or other monetary incentive from a manufacturer of a chemically dissimilar prescription drug for soliciting or encouraging a prescribing practitioner to substitute the chemically dissimilar prescription drug for a prescription drug that was originally prescribed for a patient.

B. No health care insurer shall receive or agree to receive, either directly or indirectly, a rebate, discount, kickback, fee, special charge or other monetary incentive from a manufacturer for soliciting, encouraging, demanding or directing, either through a restricted drug formulary or otherwise, a prescribing practitioner to prescribe the

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manufacturer's prescription drug for a patient.

C. No manufacturer shall pay or agree to pay, either directly or indirectly, a health care insurer a rebate, discount, kickback, fee, special charge or other monetary incentive to violate the provisions of Subsection A or B of this section.

Section 4. UNLAWFUL SELLING, DISPENSING OR PRESCRIBING.--No person shall sell, dispense or prescribe a prescription drug if the person has actual knowledge that, as a result of the drug being prescribed:

A. a health care insurer received or agreed to receive, either directly or indirectly, a rebate, discount, kickback, fee, special charge or other monetary incentive from a manufacturer in violation of Subsection A or B of Section 3 of the Ethics in Prescription Drug Choice Act; or

B. a manufacturer paid or agreed to pay, either directly or indirectly, a rebate, discount, kickback, fee, special charge or other monetary incentive to a health care insurer in violation of Subsection C of Section 3 of the Ethics in Prescription Drug Choice Act.

Section 5. EXEMPTIONS.--The provisions of Sections 3 and 4 of the Ethics In Prescription Drug Choice Act do not apply to:

A. a prescription drug prescribed by a scientific investigator for purposes of research or a veterinarian;

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B. a prescription drug dispensed by a hospital pharmacy to a patient while that patient is an inpatient at that hospital;

C. a patient or caregiver of a patient;

D. a communication regarding a potentially dangerous side effect or drug interaction associated with a particular drug; and

E. a communication that informs the recipient of the price of a prescription drug or encourages the consideration of price in an original prescribing decision.

Section 6. ENFORCEMENT.--The department of health shall enforce the provisions of the Ethics In Prescription Drug Choice Act, may impose civil penalties for violations of that act and may bring actions for temporary or permanent injunctions to restrain future violations. The department may promulgate rules necessary for the implementation and enforcement of the provisions of that act. The amount of a civil penalty shall not exceed:

A. for a defendant who did not receive a rebate, discount, kickback, fee, special charge or other monetary incentive, fifty dollars ($50.00) per violation;

B. for a defendant who received a rebate, discount, kickback, fee, special charge or other monetary incentive in violation of the Ethics In Prescription Drug Choice Act, five hundred dollars ($500) per violation; and

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C. for a manufacturer who paid or agreed to pay a rebate, discount, kickback, fee, special charge or other monetary incentive in violation of the Ethics In Prescription Drug Choice Act, one thousand dollars ($1,000) per violation.

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FORTY-FOURTH LEGISLATURE

FIRST SESSION, 1999

March 8, 1999

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 605

has had it under consideration and reports same with recommendation that it DO NOT PASS, but that

HOUSE JUDICIARY COMMITTEE SUBSTITUTE
FOR HOUSE BILL 605

DO PASS.

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Respectfully submitted,

_____

R. David Pederson, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 2 Against

Yes: 7

No: Mallory, Vaughn

Excused: Luna, Thompson, Sanchez

Absent: None

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 605

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B. "dispense" means to deliver a prescription drug to a patient pursuant to the lawful order of a prescribing practitioner;

C. "drug" means:

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(1) an article or substance recognized in the official United States pharmacopoeia national formulary or official homeopathic pharmacopoeia of the United States or a supplement to either of them;

(2) an article or substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man;

(3) an article or substance, other than food, that is intended to affect the structure or a function of the body of an individual; or

(4) an article or substance intended for use as a component described in Paragraph (1), (2) or (3) of this subsection, but does not include a device or its component parts or accessories;

D. "health care insurer" means a person that acts as an insurer, health maintenance organization, nonprofit health care plan, preferred provider organization, individual practice association, competitive medical plan, exclusive provider organization, integrated delivery system, independent physician-provider organization, physician hospital-provider organization, managed care services organization or prepaid dental plan and includes an employee, agent or contractor of such a person;

E. "manufacture" means the production, preparation, propagation, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling;

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prescription drug who obtains the prescription drug from a prescribing practitioner;

H. "person" means an individual, partnership, corporation, association, governmental agency, trust or other institution or entity;

I. "practitioner" means a physician, dentist, certified nurse-midwife or other person licensed or certified, to prescribe and administer drugs;

J. "prescribing practitioner" means a practitioner who prescribes a prescription drug for a patient;

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B. No health care insurer shall receive or agree to receive, either directly or indirectly, a rebate, discount,

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kickback, fee, special charge or other monetary incentive from a manufacturer for soliciting, encouraging, demanding or directing, either through a restricted drug formulary or otherwise, a prescribing practitioner to prescribe the manufacturer's prescription drug for a patient.

Section 4. EXEMPTIONS.--The provisions of Section 3 of the Ethics In Prescription Drug Choice Act do not apply to:

A. a prescription drug prescribed by a scientific investigator for purposes of research or a veterinarian;

B. a prescription drug dispensed by a hospital pharmacy to a patient while that patient is an inpatient at that hospital;

C. a communication regarding a potentially dangerous side effect or drug interaction associated with a particular drug; and

D. a communication that informs the recipient of the price of a prescription drug or encourages the consideration of price in an original prescribing decision.

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A. the value of the monetary incentive received or

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agreed to be received by a health care insurer in violation of Subsection A or B of Section 3 of the Ethics in Prescription Drug Choice Act; or

B. five hundred dollars ($500) for each solicitation, encouragement, demand or direction made by the health care insurer as a result of receiving or agreeing to receive a monetary incentive in violation of Subsection A or B of Section 3 of the Ethics in Prescription Drug Choice Act.

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