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HOUSE BILL 381

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Andrew J. Barreras

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 department of health;

(3) "dispense" means to deliver a cancer drug
to an eligible patient pursuant to the lawful order of a

1 practitioner, including the administering, prescribing,
2 packaging, labeling or compounding necessary to prepare the
3 cancer drug for that delivery;

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

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

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

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

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

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

25 B. There is hereby created the "cancer drug and

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

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

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

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

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

24 (4) the cancer drug or medical device is not
25 adulterated or misbranded, as determined by a pharmacist; and

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1 (5) the cancer drug or medical device is
2 prescribed by a practitioner for use by an eligible patient and
3 is dispensed by a pharmacist.

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

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

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

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

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

25 (a) eligibility criteria; and

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(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."