

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 37

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO PRESCRIPTION DRUGS; PROVIDING FOR PRESCRIPTION DRUG
DONATION; 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~~ PRESCRIPTION DRUG DONATION.--

A. As used in this section:

(1) "clinic" means a facility licensed
pursuant to Section 61-11-14 NMSA 1978 in which one or more
licensed practitioners diagnose and treat patients and in which
drugs are stored, dispensed or administered for the diagnosis
and treatment of the facility's patients; provided that
"clinic" does not include the privately owned practice of a

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1 licensed practitioner or group of licensed practitioners exempt
2 under Section 61-11-22 NMSA 1978;

3 (2) "donor" means an individual who donates
4 unused prescription drugs to a clinic or a participating
5 practitioner for the purpose of redistribution to established
6 patients of that clinic or practitioner;

7 (3) "participating practitioner" means a
8 licensed practitioner who is authorized to prescribe drugs and
9 who registers with the board, and is subject to rules
10 promulgated by the board, to participate in the collection of
11 donated drugs, prescribed for use by established patients of
12 that practitioner and donated for the purpose of redistribution
13 to established patients of that practitioner;

14 (4) "recipient" means an individual who
15 voluntarily receives donated prescription drugs; and

16 (5) "tamper-evident" means a device or process
17 that makes unauthorized access to protected pharmaceutical
18 packaging easily detected.

19 B. Unused prescription drugs may be donated to a
20 clinic or a participating practitioner and a clinic or a
21 participating practitioner may accept and redistribute the
22 donated prescription drugs in accordance with rules promulgated
23 by the board.

24 C. The board shall promulgate rules to establish:

25 (1) procedures to allow the donation and

1 redistribution of certain prescription drugs, including
2 refrigerated drugs, that:

3 (a) ensure that the redistribution
4 process is consistent with public health and safety standards;
5 and

6 (b) exclude controlled substances.

7 (2) standards and procedures for accepting,
8 storing, labeling and redistributing donated prescription
9 drugs;

10 (3) standards and procedures for inspecting
11 donated prescription drugs to determine that the packaging is
12 tamper-evident and that the donated prescription drugs are
13 unadulterated, safe and suitable for redistribution;

14 (4) a form to be signed by the recipient
15 specifying:

16 (a) knowledge that the donor is not a
17 pharmacist and took reasonable care of the donated prescription
18 drug;

19 (b) knowledge that the donor is known to
20 the clinic or the participating practitioner and that there is
21 no reason to believe that the donated prescription drug was
22 improperly handled or stored;

23 (c) that any person who exercises
24 reasonable care in donating, accepting or redistributing
25 pursuant to this section shall be immune from civil or criminal

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1 liability or professional disciplinary action of any kind for
2 any related injury, death or loss; and

3 (d) that the immunity provided by this
4 section shall not decrease or increase the civil or criminal
5 liability of a drug manufacturer, distributor or dispenser that
6 would have existed but for the donation;

7 (5) a form to be signed by the donor verifying
8 that:

9 (a) the donor is the owner of the
10 donated prescription drug;

11 (b) the donated prescription drug has
12 been properly stored and the container has not been opened or
13 tampered with;

14 (c) the donated prescription drug has
15 not been adulterated or misbranded; and

16 (d) the donor is voluntarily donating
17 the prescription drug;

18 (6) a handling fee not to exceed twenty
19 dollars (\$20.00) that may be charged to the recipient by the
20 clinic or the participating practitioner to cover the costs of
21 inspecting, storing, labeling and redistributing the donated
22 prescription drug; and

23 (7) any other standards deemed necessary by
24 the board.

25 D. The board shall maintain and publish a current

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1 listing of clinics and participating practitioners.

2 E. Before redistributing donated prescription
3 drugs, the clinic or the participating practitioner shall:

4 (1) comply with all applicable federal laws
5 and the laws of the state that deal with the inspection,
6 storage, labeling and redistribution of donated prescription
7 drugs; and

8 (2) examine the donated prescription drug to
9 determine that it has not been adulterated or misbranded and
10 certify that the drug has been stored in compliance with the
11 requirements of the product label.

12 F. Any person who exercises reasonable care in
13 donating, accepting or redistributing prescription drugs
14 pursuant to this section shall be immune from civil or criminal
15 liability or professional disciplinary action of any kind for
16 any related injury, death or loss.

17 G. The immunity provided by this section shall not
18 decrease or increase the civil or criminal liability of a drug
19 manufacturer, distributor or dispenser that would have existed
20 but for the donation.

21 H. A manufacturer shall not be liable for failure
22 to transfer or communicate product consumer information or the
23 expiration date of the donated prescription drug pursuant to
24 this section.

25 I. This section does not restrict the authority of

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1 an appropriate governmental agency to regulate or ban the use
2 of any prescription drugs."

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