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

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

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

11 D. "drug" means:

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

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

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

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

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

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

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

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

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

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

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1 to prescribe and administer drugs;

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

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

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

11 Section 3. UNLAWFUL SOLICITATION. --

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

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

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1 manufacturer's prescription drug for a patient.

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

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

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

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

21 Section 5. EXEMPTIONS. --The provisions of Sections 3 and
22 4 of the Ethics In Prescription Drug Choice Act do not apply
23 to:

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

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

4 C. a patient or caregiver of a patient;

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

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

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

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

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

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 March 8, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 605

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16 HOUSE JUDICIARY COMMITTEE SUBSTITUTE
17 FOR HOUSE BILL 605

18
19 DO PASS.

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/CSHB 605

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 7 For 2 Against

Yes: 7

No: Mallory, Vaughn

Excused: Luna, Thompson, Sanchez

Absent: None

J: \99BillsWP\H0605

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 605

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

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"Ethics In Prescription Drug Choice Act".

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

A. "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;

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

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

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

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

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

24 E. "manufacture" means the production,
25 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;

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

G. "patient" means an ultimate consumer of a

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

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

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

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

11 K. "prescription drug" means a drug required by
12 federal or state law to be dispensed only pursuant to a
13 prescription; and

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

18 Section 3. UNLAWFUL SOLICITATION. --

19 A. No health care insurer shall receive or agree
20 to receive, either directly or indirectly, a rebate, discount,
21 kickback, fee, special charge or other monetary incentive from
22 a manufacturer of a chemically dissimilar prescription drug
23 for soliciting or encouraging a prescribing practitioner to
24 substitute the chemically dissimilar prescription drug for a
25 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,

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

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

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

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

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

16 D. a communication that informs the recipient of
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18 consideration of price in an original prescribing decision.

19 Section 5. ENFORCEMENT.--The department of health shall
20 enforce the provisions of the Ethics In Prescription Drug
21 Choice Act, may impose civil penalties for violations of that
22 act and may bring actions for temporary or permanent
23 injunctions to restrain future violations. The department may
24 promulgate rules necessary for the implementation and
25 enforcement of the provisions of that act. The amount of a
civil penalty for each violation shall not exceed the greater
of:

A. the value of the monetary incentive received or

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

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

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