

2090

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to establishing under the direction of the state board of pharmacy a drug repository program to accept and dispense donated prescription drugs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The education law is amended by adding a new section 6829
2 to read as follows:

3 S 6829. REPOSITORY PROGRAM; ACCEPT AND DISPENSE DONATED PRESCRIPTION
4 DRUGS. 1. AS USED IN THIS SECTION: A. "HOSPITAL" HAS THE SAME MEANING AS
5 IN SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC
6 HEALTH LAW.

7 B. "NONPROFIT CLINIC" MEANS A CORPORATION AS DEFINED IN SUBPARAGRAPH
8 FIVE OF PARAGRAPH (A) OF SECTION ONE HUNDRED TWO OF THE NOT-FOR-PROFIT
9 CORPORATION LAW, OR ANY CHARITABLE ORGANIZATION NOT ORGANIZED AND NOT
10 OPERATED FOR PROFIT, THAT PROVIDES HEALTH CARE SERVICES TO INDIGENT AND
11 UNINSURED PERSONS. "NONPROFIT CLINIC" SHALL NOT INCLUDE A HOSPITAL OR A
12 FACILITY AS DEFINED IN SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED
13 ONE OF THE PUBLIC HEALTH LAW.

14 C. "PRESCRIPTION DRUG" MEANS ANY DRUG TO WHICH THE FOLLOWING APPLIES:

15 (1) UNDER THE FOOD, DRUG, AND COSMETIC ACT, 52 STAT. 1040 (1938), 21
16 U.S.C.A. 301, AS AMENDED, THE DRUG IS REQUIRED TO BEAR A LABEL CONTAIN-
17 ING THE LEGEND, "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT
18 PRESCRIPTION" OR "CAUTION: FEDERAL LAW RESTRICTS THIS DRUG TO USE BY OR
19 ON THE ORDER OF A LICENSED VETERINARIAN" OR ANY SIMILAR RESTRICTIVE
20 STATEMENT, OR THE DRUG MAY BE DISPENSED ONLY UPON A PRESCRIPTION.

21 (2) UNDER THIS ARTICLE, THE DRUG MAY BE DISPENSED ONLY UPON A
22 PRESCRIPTION.

23 2. THE STATE BOARD OF PHARMACY SHALL ESTABLISH A DRUG REPOSITORY
24 PROGRAM TO ACCEPT AND DISPENSE PRESCRIPTION DRUGS DONATED FOR THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD04088-01-9

1 PURPOSE OF BEING DISPENSED TO INDIVIDUALS WHO ARE RESIDENTS OF THIS
2 STATE AND MEET ELIGIBILITY STANDARDS ESTABLISHED IN RULES AND REGU-
3 LATIONS ADOPTED BY THE BOARD UNDER SUBDIVISION FIVE OF THIS SECTION.
4 ONLY PRESCRIPTION DRUGS IN THEIR ORIGINAL SEALED AND TAMPER-EVIDENT UNIT
5 DOSE PACKAGING SHALL BE ACCEPTED AND DISPENSED. THE PACKAGING SHALL BE
6 UNOPENED, EXCEPT THAT DRUGS PACKAGED IN SINGLE UNIT DOSES SHALL BE
7 ACCEPTED AND DISPENSED WHEN THE OUTSIDE PACKAGING IS OPENED IF THE
8 SINGLE UNIT DOSE PACKAGING IS UNDISTURBED. PRESCRIPTION DRUGS DONATED BY
9 INDIVIDUALS BEARING AN EXPIRATION DATE THAT IS LESS THAN SIX MONTHS FROM
10 THE DATE THE DRUG IS DONATED SHALL NOT BE ACCEPTED OR DISPENSED. A
11 PRESCRIPTION DRUG SHALL NOT BE ACCEPTED OR DISPENSED IF THERE IS REASON
12 TO BELIEVE THAT IT IS ADULTERATED AS DESCRIBED IN SECTION SIXTY-EIGHT
13 HUNDRED FIFTEEN OF THIS ARTICLE. SUBJECT TO THE LIMITATION SPECIFIED IN
14 THIS SUBDIVISION, UNUSED PRESCRIPTION DRUGS DISPENSED FOR PURPOSES OF
15 THE MEDICAID PROGRAM MAY BE ACCEPTED AND DISPENSED UNDER THE DRUG REPOS-
16 ITORY PROGRAM.

17 3. A. ANY PERSON, INCLUDING A DRUG MANUFACTURER OR ANY HEALTH CARE
18 FACILITY MAY DONATE PRESCRIPTION DRUGS TO THE DRUG REPOSITORY PROGRAM.
19 THE DRUGS SHALL BE DONATED AT A PHARMACY, HOSPITAL OR NONPROFIT CLINIC
20 THAT ELECTS TO PARTICIPATE IN THE DRUG REPOSITORY PROGRAM AND MEETS
21 CRITERIA FOR PARTICIPATION IN THE PROGRAM ESTABLISHED IN RULES AND REGU-
22 LATIONS ADOPTED BY THE STATE BOARD OF PHARMACY UNDER SUBDIVISION FIVE OF
23 THIS SECTION. PARTICIPATION IN THE PROGRAM BY PHARMACIES, HOSPITALS AND
24 NONPROFIT CLINICS IS VOLUNTARY. NOTHING IN THIS SECTION REQUIRES A PHAR-
25 MACY, HOSPITAL OR NONPROFIT CLINIC TO PARTICIPATE IN THE PROGRAM.

26 B. A PHARMACY, HOSPITAL OR NONPROFIT CLINIC ELIGIBLE TO PARTICIPATE IN
27 THE PROGRAM SHALL DISPENSE PRESCRIPTION DRUGS DONATED UNDER THIS SECTION
28 TO INDIVIDUALS WHO ARE RESIDENTS OF THIS STATE AND MEET THE ELIGIBILITY
29 STANDARDS ESTABLISHED IN RULES AND REGULATIONS ADOPTED BY THE BOARD
30 UNDER SUBDIVISION FIVE OF THIS SECTION OR TO OTHER GOVERNMENT ENTITIES
31 AND NONPROFIT PRIVATE ENTITIES TO BE DISPENSED TO INDIVIDUALS WHO MEET
32 THE ELIGIBILITY STANDARDS. A PRESCRIPTION DRUG SHALL BE DISPENSED ONLY
33 PURSUANT TO A PRESCRIPTION ISSUED BY A LICENSED HEALTH PROFESSIONAL
34 AUTHORIZED TO PRESCRIBE DRUGS, AS DEFINED IN SECTION SIXTY-EIGHT HUNDRED
35 TWO OF THIS ARTICLE. A PHARMACY, HOSPITAL OR NONPROFIT CLINIC THAT
36 ACCEPTS DONATED DRUGS SHALL COMPLY WITH ALL APPLICABLE FEDERAL LAWS AND
37 LAWS OF THIS STATE DEALING WITH STORAGE AND DISTRIBUTION OF DANGEROUS
38 DRUGS AND SHALL INSPECT ALL PRESCRIPTION DRUGS PRIOR TO DISPENSING THEM
39 TO DETERMINE THAT SUCH DRUGS ARE NOT ADULTERATED. THE PHARMACY, HOSPITAL
40 OR NONPROFIT CLINIC SHALL CHARGE INDIVIDUALS RECEIVING DONATED
41 PRESCRIPTION DRUGS A HANDLING FEE ESTABLISHED IN ACCORDANCE WITH RULES
42 AND REGULATIONS ADOPTED BY THE BOARD UNDER SUBDIVISION FIVE OF THIS
43 SECTION. PRESCRIPTION DRUGS DONATED TO THE REPOSITORY SHALL NOT BE
44 RESOLD.

45 4. A. AS USED IN THIS SECTION, "HEALTH CARE PROFESSIONAL" MEANS ANY OF
46 THE FOLLOWING WHO PROVIDE MEDICAL, DENTAL OR OTHER HEALTH-RELATED DIAG-
47 NOSIS, CARE OR TREATMENT:

48 (1) INDIVIDUALS AUTHORIZED UNDER THIS TITLE TO PRACTICE MEDICINE AND
49 SURGERY OR PODIATRIC MEDICINE AND SURGERY;

50 (2) REGISTERED PROFESSIONAL NURSES AND LICENSED PRACTICAL NURSES
51 LICENSED UNDER ARTICLE ONE HUNDRED THIRTY-NINE OF THIS TITLE;

52 (3) PHYSICIAN ASSISTANTS AUTHORIZED TO PRACTICE UNDER ARTICLE ONE
53 HUNDRED THIRTY-ONE-B OF THIS TITLE;

54 (4) DENTISTS AND DENTAL HYGIENISTS LICENSED UNDER ARTICLE ONE HUNDRED
55 THIRTY-THREE OF THIS TITLE;

1 (5) OPTOMETRISTS LICENSED UNDER ARTICLE ONE HUNDRED FORTY-THREE OF
2 THIS TITLE;

3 (6) PHARMACISTS LICENSED UNDER THIS ARTICLE.

4 B. THE STATE BOARD OF PHARMACY; THE COMMISSIONER OF HEALTH; ANY
5 PERSON, INCLUDING A DRUG MANUFACTURER OR GOVERNMENT ENTITY THAT DONATES
6 PRESCRIPTION DRUGS TO THE REPOSITORY PROGRAM; ANY PHARMACY, HOSPITAL,
7 NONPROFIT CLINIC OR HEALTH CARE PROFESSIONAL THAT ACCEPTS OR DISPENSES
8 PRESCRIPTION DRUGS UNDER THE PROGRAM; AND ANY PHARMACY, HOSPITAL OR
9 NONPROFIT CLINIC THAT EMPLOYS A HEALTH CARE PROFESSIONAL WHO, REASONABLY
10 AND IN GOOD FAITH, ACCEPTS OR DISPENSES PRESCRIPTION DRUGS UNDER THE
11 PROGRAM SHALL NOT BE SUBJECT TO ANY OF THE FOLLOWING FOR MATTERS RELATED
12 TO DONATING, ACCEPTING OR DISPENSING PRESCRIPTION DRUGS UNDER THE
13 PROGRAM: CRIMINAL PROSECUTION; LIABILITY IN TORT OR OTHER CIVIL ACTION
14 FOR INJURY, DEATH OR LOSS TO PERSON OR PROPERTY; OR PROFESSIONAL DISCI-
15 PLINARY ACTION.

16 A DRUG MANUFACTURER, WHO ACTS REASONABLY AND IN GOOD FAITH, SHALL NOT
17 BE SUBJECT TO CRIMINAL PROSECUTION OR LIABILITY IN TORT OR OTHER CIVIL
18 ACTION FOR INJURY, DEATH OR LOSS TO PERSON OR PROPERTY FOR MATTERS
19 RELATED TO THE DONATION, ACCEPTANCE OR DISPENSING OF A PRESCRIPTION DRUG
20 MANUFACTURED BY THE DRUG MANUFACTURER THAT IS DONATED BY ANY PERSON
21 UNDER THE PROGRAM, INCLUDING BUT NOT LIMITED TO LIABILITY FOR FAILURE TO
22 TRANSFER OR COMMUNICATE PRODUCT OR CONSUMER INFORMATION OR THE EXPIRA-
23 TION DATE OF THE DONATED PRESCRIPTION DRUG.

24 5. IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, THE STATE BOARD OF
25 PHARMACY SHALL ADOPT RULES AND REGULATIONS GOVERNING THE DRUG REPOSITORY
26 PROGRAM THAT ESTABLISH ALL OF THE FOLLOWING:

27 A. ELIGIBILITY CRITERIA FOR PHARMACIES, HOSPITALS AND NONPROFIT CLIN-
28 ICS TO RECEIVE AND DISPENSE DONATED PRESCRIPTION DRUGS UNDER THE
29 PROGRAM;

30 B. STANDARDS AND PROCEDURES FOR ACCEPTING, SAFELY STORING AND DISPENS-
31 ING DONATED PRESCRIPTION DRUGS;

32 C. STANDARDS AND PROCEDURES FOR INSPECTING DONATED PRESCRIPTION DRUGS
33 TO DETERMINE THAT THE ORIGINAL UNIT DOSE PACKAGING IS SEALED AND
34 TAMPER-EVIDENT AND THAT THE DRUGS ARE UNADULTERATED, SAFE AND SUITABLE
35 FOR DISPENSING;

36 D. ELIGIBILITY STANDARDS BASED ON ECONOMIC NEED FOR INDIVIDUALS TO
37 RECEIVE PRESCRIPTION DRUGS;

38 E. A MEANS, SUCH AS AN IDENTIFICATION CARD, BY WHICH AN INDIVIDUAL WHO
39 IS ELIGIBLE TO RECEIVE DONATED PRESCRIPTION DRUGS SHALL DEMONSTRATE
40 ELIGIBILITY TO THE PHARMACY, HOSPITAL OR NONPROFIT CLINIC DISPENSING THE
41 DRUGS;

42 F. A FORM THAT AN INDIVIDUAL RECEIVING A PRESCRIPTION DRUG FROM THE
43 REPOSITORY SHALL SIGN BEFORE RECEIVING THE DRUG TO CONFIRM THAT THE
44 INDIVIDUAL UNDERSTANDS THE IMMUNITY PROVISIONS OF THE PROGRAM;

45 G. A FORMULA TO DETERMINE THE AMOUNT OF A HANDLING FEE THAT PHARMA-
46 CIES, HOSPITALS AND NONPROFIT CLINICS SHALL CHARGE TO PRESCRIPTION DRUG
47 RECIPIENTS TO COVER RESTOCKING AND DISPENSING COSTS;

48 H. IN ADDITION, FOR PRESCRIPTION DRUGS DONATED TO THE REPOSITORY BY
49 INDIVIDUALS:

50 (1) A LIST OF PRESCRIPTION DRUGS, ARRANGED EITHER BY CATEGORY OR BY
51 INDIVIDUAL DRUG, THAT THE REPOSITORY SHALL ACCEPT FROM INDIVIDUALS;

52 (2) A LIST OF PRESCRIPTION DRUGS, ARRANGED EITHER BY CATEGORY OR BY
53 INDIVIDUAL DRUG, THAT THE REPOSITORY SHALL NOT ACCEPT FROM INDIVIDUALS.
54 THE LIST SHALL INCLUDE BUT NOT BE LIMITED TO, A STATEMENT AS TO WHY THE
55 DRUG IS INELIGIBLE FOR DONATION.

1 (3) A FORM EACH DONOR SHALL SIGN STATING THAT THE DONOR IS THE OWNER
2 OF THE PRESCRIPTION DRUGS AND INTENDS TO VOLUNTARILY DONATE SUCH DRUGS
3 TO THE REPOSITORY.

4 I. IN ADDITION, FOR PRESCRIPTION DRUGS DONATED TO THE REPOSITORY BY
5 HEALTH CARE FACILITIES:

6 (1) A LIST OF PRESCRIPTION DRUGS, ARRANGED EITHER BY CATEGORY OR BY
7 INDIVIDUAL DRUG, THAT THE REPOSITORY SHALL ACCEPT FROM HEALTH CARE
8 FACILITIES;

9 (2) A LIST OF PRESCRIPTION DRUGS, ARRANGED EITHER BY CATEGORY OR BY
10 INDIVIDUAL DRUG, THAT THE REPOSITORY SHALL NOT ACCEPT FROM HEALTH CARE
11 FACILITIES. THE LIST SHALL INCLUDE A STATEMENT AS TO WHY SUCH DRUG IS
12 INELIGIBLE FOR DONATION.

13 J. ANY OTHER STANDARDS AND PROCEDURES THE BOARD CONSIDERS APPROPRIATE.

14 S 2. This act shall take effect on the one hundred twentieth day after
15 it shall have become a law; provided, however, that effective immediate-
16 ly, the addition, amendment and/or repeal of any rule or regulation
17 necessary for the implementation of this act on its effective date are
18 authorized and directed to be made and completed on or before such
19 effective date.