S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

April 29, 2011

Introduced by M. of A. GOTTFRIED, ORTIZ, DINOWITZ, JACOBS, P. RIVERA, GALEF, RODRIGUEZ, LINARES, KAVANAGH, TITONE, CASTRO, JEFFRIES, HEVESI, ROSENTHAL, CRESPO, MENG, BARRON, MOYA, JAFFEE -- Multi-Sponsored by -- M. of A. DenDEKKER, HEASTIE, McENENY, NOLAN, STEVENSON -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the education law, in relation to prescription forms and labels, interpretation services and patients with limited English proficiency

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

Section 1. The opening paragraph of section 21 of the public health law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. THE COMMISSIONER SHALL PROMULGATE REGULATIONS REQUIRING THAT PRESCRIPTION FORMS AND ELECTRONIC PRESCRIPTIONS INCLUDE: (A) A SECTION WHEREIN PRESCRIBERS MAY INDICATE WHETHER AN INDIVIDUAL IS LIMITED ENGLISH PROFICIENT; AND (B) IF THE PATIENT IS LIMITED ENGLISH PROFICIENT, A LINE WHERE THE PRESCRIBER MAY SPECIFY THE PREFERRED LANGUAGE INDICATED BY THE PATIENT. FOR THE PURPOSES OF THIS SUBDIVISION, A "LIMITED ENGLISH PROFICIENT INDIVIDUAL" MEANS AN INDIVIDUAL WHO IDENTIFIES AS BEING, OR IS EVIDENTLY, UNABLE TO SPEAK, READ OR WRITE ENGLISH AT A LEVEL THAT PERMITS SUCH INDIVIDUAL TO UNDERSTAND HEALTH-RELATED AND PHARMACEUTICAL INFORMATION COMMUNICATED IN ENGLISH.

S 2. Subdivision 1 of section 6810 of the education law, as amended by chapter 905 of the laws of 1985, is amended to read as follows:

1. No drug for which a prescription is required by the provisions of the Federal Food, Drug and Cosmetic Act or by the commissioner of health shall be distributed or dispensed to any person except upon a prescription written by a person legally authorized to issue such

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

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prescription. Such drug shall be compounded or dispensed by a licensed pharmacist, and no such drug shall be dispensed without affixing to the immediate container in which the drug is sold or dispensed a label bearing the name and address of the owner of the establishment in which it was dispensed, the date compounded, the number of the prescription under which it is recorded in the pharmacist's prescription files, the name of the prescriber, the name and address of the patient, and the directions for the use of the drug by the patient as given upon the prescription. ALL LABELS SHALL CONFORM TO SUCH RULES AND REGULATIONS AS PROMULGATED BY THE COMMISSIONER PURSUANT TO SECTION SIXTY-EIGHT HUNDRED TWENTY-NINE OF THIS ARTICLE. The prescribing and dispensing of a drug which is a controlled substance shall be subject to additional requirements provided in article thirty-three of the public health law. The words "drug" and "prescription required drug" within the meaning of this article shall not be construed to include soft or hard contact lenses, eyeglasses, or any other device for the aid or correction of vision. Nothing in this subdivision shall prevent a pharmacy from furnishing a drug to another pharmacy which does not have such drug in stock for the purpose of filling a prescription.

S 3. The education law is amended by adding a new section 6829 to read as follows:

S 6829. INTERPRETATION REQUIREMENTS FOR PRESCRIPTION DRUGS AND STANDARDIZED MEDICATION LABELING. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: (A) "COVERED PHARMACY" MEANS ANY PHARMACY THAT IS PART OF A GROUP OF FIVE OR MORE PHARMACIES OWNED BY THE SAME CORPORATE ENTITY.

(B) "LIMITED ENGLISH PROFICIENT INDIVIDUAL" OR "LEP INDIVIDUAL" MEANS AN INDIVIDUAL WHO IDENTIFIES AS BEING, OR IS EVIDENTLY, UNABLE TO SPEAK, READ OR WRITE ENGLISH AT A LEVEL THAT PERMITS SUCH INDIVIDUAL TO UNDERSTAND HEALTH-RELATED AND PHARMACEUTICAL INFORMATION COMMUNICATED IN ENGLISH.

(C) "TRANSLATE" SHALL MEAN THE CONVERSION OF A WRITTEN TEXT FROM ONE LANGUAGE INTO AN EQUIVALENT WRITTEN TEXT IN ANOTHER LANGUAGE BY AN INDIVIDUAL COMPETENT TO DO SO AND UTILIZING ALL NECESSARY PHARMACEUTICAL AND HEALTH-RELATED TERMINOLOGY.

(D) "COMPETENT ORAL INTERPRETATION" MEANS ORAL COMMUNICATION IN WHICH (I) A PERSON ACTING AS AN INTERPRETER COMPREHENDS A SPOKEN MESSAGE AND RE-EXPRESSES THAT MESSAGE ACCURATELY IN ANOTHER LANGUAGE, UTILIZING ALL NECESSARY PHARMACEUTICAL AND HEALTH-RELATED TERMINOLOGY; OR (II) A BILINGUAL PHARMACY STAFF MEMBER COMMUNICATES PROFICIENTLY WITH AN LEP INDIVIDUAL IN THE LEP INDIVIDUAL'S PRIMARY LANGUAGE UTILIZING ALL NECESSARY PHARMACEUTICAL AND HEALTH-RELATED TERMINOLOGY.

(E) "PHARMACY PRIMARY LANGUAGES" SHALL MEAN THE TOP SEVEN LANGUAGES SPOKEN BY LEP INDIVIDUALS IN THIS STATE AS DETERMINED BIENNIALLY BY THE STATE BOARD OF PHARMACY BASED ON DATA FROM THE MOST RECENT AMERICAN COMMUNITY SURVEY FROM THE U.S. CENSUS BUREAU AND OTHER RELEVANT DATA SOURCES.

(F) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY THAT DISPENSES MOST OF ITS PRESCRIPTIONS THROUGH THE UNITED STATES POSTAL SERVICE OR OTHER DELIVERY SYSTEM.

2. (A) EVERY COVERED PHARMACY AND MAIL ORDER PHARMACY SHALL PROVIDE FREE, COMPETENT ORAL INTERPRETATION SERVICES TO EACH LEP INDIVIDUAL FILLING A PRESCRIPTION AT SUCH COVERED PHARMACY OR THROUGH SUCH MAIL ORDER PHARMACY IN THE LEP INDIVIDUAL'S PRIMARY LANGUAGE FOR THE PURPOSES OF COUNSELING SUCH INDIVIDUAL ABOUT HIS OR HER PRESCRIPTION MEDICATIONS OR WHEN SOLICITING INFORMATION NECESSARY TO MAINTAIN A PATIENT MEDICA-

TION PROFILE, UNLESS THE LEP INDIVIDUAL IS OFFERED AND REFUSES SUCH SERVICES.

(B) EVERY COVERED PHARMACY AND MAIL ORDER PHARMACY SHALL PROVIDE FREE, COMPETENT ORAL INTERPRETATION OF PRESCRIPTION MEDICATION LABELS, WARNING LABELS AND OTHER WRITTEN MATERIAL TO EACH LEP INDIVIDUAL FILLING A PRESCRIPTION AT SUCH COVERED PHARMACY OR THROUGH SUCH MAIL ORDER PHARMACY, UNLESS THE LEP INDIVIDUAL IS OFFERED AND REFUSES SUCH SERVICES OR THE MEDICATION LABEL, WARNING LABELS AND OTHER WRITTEN MATERIALS HAVE ALREADY BEEN TRANSLATED INTO THE LANGUAGE SPOKEN BY THE LEP INDIVIDUAL.

(C) THE SERVICES REQUIRED BY THIS SECTION MAY BE PROVIDED BY A STAFF MEMBER OF THE PHARMACY OR A THIRD-PARTY CONTRACTOR. SUCH SERVICES MUST BE PROVIDED ON AN IMMEDIATE BASIS BUT NEED NOT BE PROVIDED IN-PERSON OR FACE-TO-FACE IN ORDER TO MEET THE REQUIREMENTS OF THIS SECTION.

3. EVERY COVERED PHARMACY SHALL CONSPICUOUSLY POST, AT OR ADJACENT TO EACH COUNTER OVER WHICH PRESCRIPTION DRUGS ARE SOLD, AND EVERY MAIL ORDER PHARMACY SHALL INCLUDE IN THE PACKAGE IN WHICH PRESCRIPTION DRUGS ARE DELIVERED A NOTIFICATION OF THE RIGHT TO FREE LANGUAGE ASSISTANCE SERVICES FOR LIMITED ENGLISH PROFICIENT INDIVIDUALS AS PROVIDED FOR IN SUBDIVISION TWO OF THIS SECTION. SUCH NOTIFICATIONS SHALL BE PROVIDED IN THE PHARMACY PRIMARY LANGUAGES. THE SIZE, STYLE AND PLACEMENT OF SUCH NOTICE SHALL BE DETERMINED IN ACCORDANCE WITH RULES PROMULGATED BY THE COMMISSIONER.

4. ANY PERSON AGGRIEVED BY A FAILURE TO RECEIVE SERVICES REQUIRED BY THIS SECTION SHALL HAVE A CAUSE OF ACTION ONLY AGAINST THE COVERED PHARMACY OR MAIL ORDER PHARMACY IN ANY COURT OF COMPETENT JURISDICTION FOR DAMAGES, INCLUDING PUNITIVE DAMAGES, AND FOR INJUNCTIVE RELIEF AND SUCH OTHER REMEDIES AS MAY BE APPROPRIATE.

5. (A) THE COMMISSIONER SHALL DEVELOP RULES AND REGULATIONS REQUIRING A STANDARDIZED, PATIENT-CENTERED, PRESCRIPTION DRUG LABEL TO BE USED ON ALL PRESCRIPTION MEDICINE DISPENSED TO PATIENTS IN THIS STATE.

(B) WHEN DEVELOPING THE REQUIREMENTS FOR PRESCRIPTION DRUG LABELS, THE COMMISSIONER SHALL CONSIDER FACTORS INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(I) MEDICAL LITERACY RESEARCH THAT POINTS TO INCREASED UNDERSTANDABILITY OF LABELS;

(II) IMPROVED DIRECTIONS FOR USE;

(III) IMPROVED FONT TYPES AND SIZES;

(IV) PLACEMENT OF INFORMATION THAT IS PATIENT-CENTERED;

(V) THE NEEDS OF SENIOR CITIZENS.

TO ENSURE MAXIMUM PUBLIC COMMENT, THE COMMISSIONER SHALL HOLD PUBLIC MEETINGS TO SEEK INFORMATION FROM GROUPS REPRESENTING CONSUMERS, SENIORS, PHARMACISTS OR THE PRACTICE OF PHARMACY, OTHER HEALTH CARE PROFESSIONALS, AND OTHER INTERESTED PARTIES.

(C) TWO HUNDRED SEVENTY DAYS AFTER THE COMMISSIONER HAS ISSUED ITS FINAL RULES AND REGULATIONS REGARDING STANDARDIZED, PATIENT-CENTERED PRESCRIPTION MEDICATION LABELS, COVERED PHARMACIES AND MAIL ORDER PHARMACIES SHALL PROVIDE FREE, COMPETENT TRANSLATED MEDICATION LABELS TO EACH LEP INDIVIDUAL FILLING A PRESCRIPTION AT SUCH COVERED PHARMACY OR MAIL ORDER PHARMACY WHO SPEAKS ONE OF THE PHARMACY PRIMARY LANGUAGES. NOTHING IN THIS SECTION SHALL PROHIBIT A COVERED PHARMACY OR MAIL ORDER PHARMACY FROM PROVIDING TRANSLATED MEDICATION LABELS IN LANGUAGES IN ADDITION TO THE PHARMACY PRIMARY LANGUAGES. THE COVERED PHARMACY OR MAIL ORDER PHARMACY SHALL PROVIDE FREE, COMPETENT ORAL INTERPRETATION OF MEDICATION LABELS TO LEP INDIVIDUALS WHO DO NOT SPEAK ONE OF THE PHARMACY PRIMARY LANGUAGES, UNLESS THE LEP INDIVIDUAL IS OFFERED AND REFUSES SUCH SERVICES.

6. THIS SECTION SHALL PREEMPT ANY CONTRARY LOCAL LAW OR ORDINANCE, EXCEPT THAT THIS SECTION SHALL NOT PREEMPT OR SUPERCEDE LOCAL LAWS OR ORDINANCES IMPOSING ADDITIONAL OR STRICTER REQUIREMENTS RELATING TO INTERPRETATION OR TRANSLATION SERVICES IN PHARMACIES.

S 4. Section 6509 of the education law is amended by adding a new subdivision 15 to read as follows:

(15) A VIOLATION OF SECTION SIXTY-EIGHT HUNDRED TWENTY-NINE OF THIS CHAPTER (INTERPRETATION REQUIREMENTS FOR PRESCRIPTION DRUGS AND STANDARDIZED MEDICATION LABELING), BUT ONLY AS TO A PHARMACY AND NOT TO AN INDIVIDUAL LICENSED PHARMACIST.

S 5. This act shall take effect one year after it shall become a law; provided, however, that the commissioner of health, the commissioner of education and the state board of pharmacy are immediately authorized and directed to take actions necessary to implement this act when it takes effect.