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

4150--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. ENGLEBRIGHT, LUPARDO, WEISENBERG -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to return and redistribution of unused medication

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

Section 1. Section 2803-e of the public health law, as added by chapter 902 of the laws of 1977 and renumbered by chapter 340 of the laws of 1980, is amended to read as follows:

S 2803-e. Residential health care facilities; return and redistribution of unused medication. 1. Notwithstanding any inconsistent provision of law, rule or regulation to the contrary, the commissioner is hereby authorized and directed to permit either a resident or consultant pharmacist OR HIS OR HER DESIGNEE in a residential health care facility to return to the pharmacy from which it was purchased any unused medication provided that such medication is sealed in THE MANUFACTURER'S ORIGINAL unopened[,] TAMPER EVIDENT PACKAGING AND EITHER individually packaged [units] OR PACKAGED IN UNIT-DOSE PACKAGING and within the recommended period of shelf life, AND, IF ORAL OR PARENTERAL MEDICATIONS, SEALED IN SINGLE-DOSE CONTAINERS APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION, AND, IF A TOPICAL OR INHALANT DRUG, IS SEALED IN UNITS-OF-USE CONTAINERS APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION and provided that such medication is not a controlled substance as defined in section thirty-three hundred six of [the public health law] THIS CHAPTER.

2. The pharmacy to which such medication as described in subdivision one of this section is returned shall be permitted to receive, restock and redistribute that medication. THE COMMISSIONER, IN CONSULTATION

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

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WITH THE ADVISORY COMMITTEE ESTABLISHED BY SUBDIVISION SIX OF THIS SECTION, SHALL ESTABLISH A REASONABLE FEE OF REIMBURSEMENT OF COSTS RELATED TO THE RECEIPT, RESTOCKING AND REDISTRIBUTION OF SUCH MEDICATION PAYABLE TO THE PHARMACY TO WHICH SUCH MEDICATION IS RETURNED.

3. The pharmacy to which such medication as described in subdivision one of this section is returned shall be required to reimburse or credit the purchaser of that medication for the unused medication that is restocked and redistributed. No pharmacy shall be required to accept any medication returned under subdivision one of this section.

4. Neither an individual patient or the state, if a patient is a recipient of a state funded program, shall be charged for unused medication which according to the provisions of this law is returned for reimbursement or credit.

5. THE COMMISSIONER SHALL ESTABLISH PROCEDURES TO ASSURE THAT ANY RETURN OF MEDICATIONS AUTHORIZED BY THIS SECTION, AND ANY RECEIPT, RESTOCKING OR REDISTRIBUTION OF MEDICATION SO RETURNED SHALL COMPLY WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996, AS AMENDED.

6. THE DEPARTMENT SHALL CONVENE AN ADVISORY COMMITTEE TO ASSIST THE COMMISSIONER IN DEVELOPING A REASONABLE FEE OF REIMBURSEMENT PURSUANT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION. THE ADVISORY COMMITTEE SHALL BE COMPRISED OF LICENSED PHARMACISTS CURRENTLY ENGAGED IN THE PROVISION OF LONG TERM CARE PHARMACY SERVICES. MEMBERS OF THE COMMITTEE SHALL BE APPOINTED BY THE GOVERNOR: TWO MEMBERS OF THE COMMITTEE SHALL BE APPOINTED ON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY; AND TWO MEMBERS SHALL BE APPOINTED ON THE RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY AND THE MINORITY LEADER OF THE SENATE.

7. A PRESCRIPTION DRUG MANUFACTURER SHALL NOT, IN THE ABSENCE OF BAD FAITH, BE SUBJECT TO CRIMINAL OR CIVIL LIABILITY FOR INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY FOR MATTERS RELATED TO THE RETURN, DONATION, ACCEPTANCE, REDISTRIBUTION OR DISPENSING OF A PRESCRIPTION DRUG MANUFACTURED BY THE PRESCRIPTION DRUG MANUFACTURER THAT IS DONATED BY ANY PERSON UNDER THE PROGRAM, INCLUDING BUT NOT LIMITED TO LIABILITY FOR FAILURE TO TRANSFER OR COMMUNICATE PRODUCT OR CONSUMER INFORMATION OR THE EXPIRATION DATE OF THE DONATED PRESCRIPTION DRUG.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that the commissioner of health shall promulgate rules and regulations prior to such effective date.