

# STATE OF NEW YORK

3085

2019-2020 Regular Sessions

## IN SENATE

February 1, 2019

Introduced by Sen. CARLUCCI -- 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 6832  
2 to read as follows:

3 § 6832. 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 (3) Drugs that can only be dispensed to a patient registered with the  
24 drug's manufacturer in accordance with federal Food and Drug Adminis-

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

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1 tration requirements may not be accepted or distributed under the  
2 provisions of this section.

3 2. The state board of pharmacy shall establish a drug repository  
4 program to accept and dispense prescription drugs donated for the  
5 purpose of being dispensed to individuals who are residents of this  
6 state and meet eligibility standards established in rules and regu-  
7 lations adopted by the board under subdivision five of this section.  
8 Only prescription drugs in their original sealed and tamper-evident unit  
9 dose packaging shall be accepted and dispensed. The packaging shall be  
10 unopened, except that drugs packaged in single unit doses shall be  
11 accepted and dispensed when the outside packaging is opened if the  
12 single unit dose packaging is undisturbed. Prescription drugs donated by  
13 individuals bearing an expiration date that is less than six months from  
14 the date the drug is donated shall not be accepted or dispensed. A  
15 prescription drug shall not be accepted or dispensed if there is reason  
16 to believe that it is adulterated as described in section sixty-eight  
17 hundred fifteen of this article. Subject to the limitation specified in  
18 this subdivision, unused prescription drugs dispensed for purposes of  
19 the medicaid program may be accepted and dispensed under the drug repos-  
20 itory program.

21 3. a. Any person, including a drug manufacturer or any health care  
22 facility may donate prescription drugs to the drug repository program.  
23 The drugs shall be donated at a pharmacy, hospital or nonprofit clinic  
24 that elects to participate in the drug repository program and meets  
25 criteria for participation in the program established in rules and regu-  
26 lations adopted by the state board of pharmacy under subdivision five of  
27 this section. Participation in the program by pharmacies, hospitals and  
28 nonprofit clinics is voluntary. Nothing in this section requires a phar-  
29 macy, hospital or nonprofit clinic to participate in the program.

30 b. A pharmacy, hospital or nonprofit clinic eligible to participate in  
31 the program shall dispense prescription drugs donated under this section  
32 to individuals who are residents of this state and meet the eligibility  
33 standards established in rules and regulations adopted by the board  
34 under subdivision five of this section or to other government entities  
35 and nonprofit private entities to be dispensed to individuals who meet  
36 the eligibility standards. A prescription drug shall be dispensed only  
37 pursuant to a prescription issued by a licensed health professional  
38 authorized to prescribe drugs, as defined in section sixty-eight hundred  
39 two of this article. A pharmacy, hospital or nonprofit clinic that  
40 accepts donated drugs shall comply with all applicable federal laws and  
41 laws of this state dealing with storage and distribution of dangerous  
42 drugs and shall inspect all prescription drugs prior to dispensing them  
43 to determine that such drugs are not adulterated. The pharmacy, hospital  
44 or nonprofit clinic shall charge individuals receiving donated  
45 prescription drugs a handling fee established in accordance with rules  
46 and regulations adopted by the board under subdivision five of this  
47 section. Prescription drugs donated to the repository shall not be  
48 resold.

49 4. a. As used in this section, "health care professional" means any of  
50 the following who provide medical, dental or other health-related diag-  
51 nosis, care or treatment:

52 (1) Individuals authorized under this title to practice medicine and  
53 surgery or podiatric medicine and surgery;

54 (2) Registered professional nurses and licensed practical nurses  
55 licensed under article one hundred thirty-nine of this title;

1 (3) Physician assistants authorized to practice under article one  
2 hundred thirty-one-B of this title;

3 (4) Dentists and dental hygienists licensed under article one hundred  
4 thirty-three of this title;

5 (5) Optometrists licensed under article one hundred forty-three of  
6 this title;

7 (6) Pharmacists licensed under this article.

8 b. The state board of pharmacy; the commissioner of health; any  
9 person, including a drug manufacturer or government entity that donates  
10 prescription drugs to the repository program; any pharmacy, hospital,  
11 nonprofit clinic or health care professional that accepts or dispenses  
12 prescription drugs under the program; and any pharmacy, hospital or  
13 nonprofit clinic that employs a health care professional who, reasonably  
14 and in good faith, accepts or dispenses prescription drugs under the  
15 program shall not be subject to any of the following for matters related  
16 to donating, accepting or dispensing prescription drugs under the  
17 program: criminal prosecution; liability in tort or other civil action  
18 for injury, death or loss to person or property; or professional disci-  
19 plinary action.

20 A drug manufacturer, who acts reasonably and in good faith, shall not  
21 be subject to criminal prosecution or liability in tort or other civil  
22 action for injury, death or loss to person or property for matters  
23 related to the donation, acceptance or dispensing of a prescription drug  
24 manufactured by the drug manufacturer that is donated by any person  
25 under the program, including but not limited to liability for failure to  
26 transfer or communicate product or consumer information or the expira-  
27 tion date of the donated prescription drug.

28 5. In consultation with the commissioner of health, the state board of  
29 pharmacy shall adopt rules and regulations governing the drug repository  
30 program that establish all of the following:

31 a. Eligibility criteria for pharmacies, hospitals and nonprofit clin-  
32 ics to receive and dispense donated prescription drugs under the  
33 program;

34 b. Standards and procedures for accepting, safely storing and dispens-  
35 ing donated prescription drugs;

36 c. Standards and procedures for inspecting donated prescription drugs  
37 to determine that the original unit dose packaging is sealed and  
38 tamper-evident and that the drugs are unadulterated, safe and suitable  
39 for dispensing;

40 d. Eligibility standards based on economic need for individuals to  
41 receive prescription drugs;

42 e. A means, such as an identification card, by which an individual who  
43 is eligible to receive donated prescription drugs shall demonstrate  
44 eligibility to the pharmacy, hospital or nonprofit clinic dispensing the  
45 drugs;

46 f. A form that an individual receiving a prescription drug from the  
47 repository shall sign before receiving the drug to confirm that the  
48 individual understands the immunity provisions of the program;

49 g. A formula to determine the amount of a handling fee that pharma-  
50 cies, hospitals and nonprofit clinics shall charge to prescription drug  
51 recipients to cover restocking and dispensing costs;

52 h. In addition, for prescription drugs donated to the repository by  
53 individuals:

54 (1) A list of prescription drugs, arranged either by category or by  
55 individual drug, that the repository shall accept from individuals;

1     (2) A list of prescription drugs, arranged either by category or by  
2     individual drug, that the repository shall not accept from individuals.  
3     The list shall include but not be limited to, a statement as to why the  
4     drug is ineligible for donation.

5     (3) A form each donor shall sign stating that the donor is the owner  
6     of the prescription drugs and intends to voluntarily donate such drugs  
7     to the repository.

8     i. In addition, for prescription drugs donated to the repository by  
9     health care facilities:

10    (1) A list of prescription drugs, arranged either by category or by  
11    individual drug, that the repository shall accept from health care  
12    facilities;

13    (2) A list of prescription drugs, arranged either by category or by  
14    individual drug, that the repository shall not accept from health care  
15    facilities. The list shall include a statement as to why such drug is  
16    ineligible for donation.

17    j. Any other standards and procedures the board considers appropriate.

18    § 2. This act shall take effect on the one hundred eightieth day after  
19    it shall have become a law. Effective immediately, the addition, amend-  
20    ment and/or repeal of any rule or regulation necessary for the implemen-  
21    tation of this act on its effective date is authorized to be made on or  
22    before such effective date.