SENATE BILL 166

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

John M. Sapien

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE; AMENDING THE PHARMACY ACT TO PROVIDE FOR THE MEMBERSHIP OF TWO PHARMACY TECHNICIANS ON THE BOARD OF PHARMACY; PROVIDING A NEW DEFINITION OF THE TERM "PHARMACY TECHNICIAN".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-11-2 NMSA 1978 (being Laws 1969, Chapter 29, Section 2, as amended) is amended to read:

"61-11-2. DEFINITIONS.--As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing,

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assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to [~~such~~] other persons authorized by law to receive [~~such~~] the information, regardless of whether [~~such~~] the information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home,

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retirement care, mental care or other facility that provides extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "RX only";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician.";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or

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device other than by administering or dispensing;

K. "drug" means:

(1) an article recognized as a drug in [~~any~~] an official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or [~~any~~] a function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

(6) drug-drug interactions;

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(7) adverse drug reactions; and

(8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to [~~any~~] a drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by [~~any~~] a state, territory or possession of the United States who, within the limits of [~~his~~] the person's license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or

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repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means nonnarcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "patient counseling" means the oral communication by the pharmacist of information to a patient or [~~his~~] the patient's agent or caregiver regarding proper use of a drug or device;

U. "person" means an individual, corporation, partnership, association or other legal entity;

V. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

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W. "pharmacist" means a person who is licensed as a pharmacist in this state;

X. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Y. "pharmacy" means a licensed place of business where drugs are compounded or dispensed and pharmaceutical care is provided;

Z. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

AA. "pharmacy technician" means a person who is registered with the board to perform repetitive tasks not requiring the professional judgment of a pharmacist, including technical activities associated with the preparation and distribution of medication;

BB. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering or prescribing of dangerous drug therapy; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and

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labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records;

CC. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or [~~his~~] the licensed practitioner's agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, [~~his~~] the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

DD. "significant adverse drug event" means a drug-related incident that may result in harm, injury or death to the patient; and

EE. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution."

SECTION 2. Section 61-11-4 NMSA 1978 (being Laws 1969, Chapter 29, Section 3, as amended) is amended to read:

"61-11-4. BOARD CREATED--MEMBERS--QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

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A. There is created the "board of pharmacy". The board shall be administratively attached to the regulation and licensing department. The board consists of [~~nine~~] eleven members, each of whom shall be a citizen of the United States and a resident of New Mexico.

B. Five members shall be pharmacists appointed by the governor for staggered terms of five years each from lists submitted to the governor by the New Mexico pharmaceutical association, which lists contain the names of two pharmacists residing in each of the five pharmacy districts. Appointments of pharmacist members shall be made for five years or less each and made in such a manner that the term of one pharmacist member expires on July 1 of each year. One pharmacist member shall be appointed from each pharmacy district. A pharmacist member of the board shall have been actively engaged in the pharmaceutical profession in this state for at least three years immediately prior to [~~his~~] appointment and shall have had a minimum of eight years of practical experience as a pharmacist. A vacancy shall be filled by appointment by the governor for the unexpired term from lists submitted by the New Mexico pharmaceutical association to the governor. Pharmacist members shall reside in the district from which they are appointed.

C. Two members shall be pharmacy technicians appointed by the governor from a list submitted to the governor

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by the New Mexico pharmaceutical association. Initial appointments of pharmacy technician members shall be made for staggered terms of five years or less and made in such a manner so that not more than one pharmacy technician's term shall expire on July 1 of each year. A vacancy in a pharmacy technician's term shall be filled by appointment by the governor for the unexpired term.

[~~C.~~] D. Three members of the board shall be appointed by the governor to represent the public. The public members of the board shall not have been licensed as pharmacists or have any significant financial interest, whether direct or indirect, in the profession regulated. A vacancy in a public member's term shall be filled by appointment by the governor for the unexpired term. Initial appointments of public members shall be made for staggered terms of five years or less and made in such a manner that not more than two public members' terms shall expire on July 1 of each year.

[~~D.~~] E. One member of the board shall be a pharmacist appointed at large from a list submitted to the governor by the New Mexico society of [~~health systems~~] health-system pharmacists. The member shall be appointed by the governor to a term of five years. A vacancy in the member's term shall be filled by appointment by the governor for the unexpired term from a list submitted to the governor by the New Mexico society of [~~health systems~~] health-system pharmacists.

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[~~E.~~] F. There are created five pharmacy districts as follows:

(1) northeast district, which shall be composed of the counties of Colfax, Guadalupe, Harding, Los Alamos, Mora, Quay, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos, Torrance and Union;

(2) northwest district, which shall be composed of the counties of McKinley, San Juan, Valencia and Cibola;

(3) central district, which shall be composed of the county of Bernalillo;

(4) southeast district, which shall be composed of the counties of Chaves, Curry, De Baca, Eddy, Lea and Roosevelt; and

(5) southwest district, which shall be composed of the counties of Catron, Dona Ana, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra and Socorro.

[~~F.~~] G. A board member shall not serve more than two full terms, consecutive or otherwise.

[~~G.~~] H. A board member failing to attend three consecutive regular meetings is automatically removed as a member of the board.

[~~H.~~] I. The governor may remove a member of the board for neglect of a duty required by law, for incompetency or for unprofessional conduct and shall remove a board member

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who violates a provision of the Pharmacy Act."

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