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SENATE BILL 262

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE PUBLIC HEALTH ACT AND THE PHARMACY ACT TO PROVIDE FOR THE AUTHORIZED POSSESSION, STORAGE, DISTRIBUTION, PRESCRIBING AND ADMINISTRATION OF OPIOID ANTAGONISTS; PROVIDING FOR IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY.

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

SECTION 1. Section 24-23-1 NMSA 1978 (being Laws 2001, Chapter 228, Section 1) is amended to read:

"24-23-1. AUTHORITY TO POSSESS, STORE, DISTRIBUTE, DISPENSE, PRESCRIBE AND ADMINISTER OPIOID ANTAGONISTS--RELEASE FROM LIABILITY--RULEMAKING.--

A. A person [~~authorized under federal, state or local government regulations, other than a licensed health care professional permitted by law to administer an opioid~~

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1 ~~antagonist]~~ may possess an opioid antagonist, regardless of  
2 whether the person holds a prescription for the opioid  
3 antagonist.

4 B. Any person acting under a standing order issued  
5 by a licensed prescriber may store or distribute an opioid  
6 antagonist.

7 C. Pursuant to a valid prescription, a pharmacist  
8 may dispense an opioid antagonist to a person:

9 (1) at risk of experiencing an opioid-related  
10 drug overdose; or

11 (2) in a position to assist another person at  
12 risk of experiencing an opioid-related drug overdose.

13 D. A pharmacist may distribute an opioid antagonist  
14 to a registered overdose prevention and education program.

15 E. A person may administer an opioid antagonist to  
16 another person if the person:

17 (1) [he] in good faith, believes the other  
18 person is experiencing a drug overdose; and

19 (2) [he] acts with reasonable care in  
20 administering the drug to the other person.

21 ~~[B. A person who administers an opioid antagonist~~  
22 ~~to another person pursuant to Subsection A of this section~~  
23 ~~shall not be subject to civil liability or criminal prosecution~~  
24 ~~as a result of the administration of the drug.]~~

25 F. A licensed prescriber may directly or by

1 standing order prescribe, dispense or distribute an opioid  
2 antagonist to:

3 (1) a person at risk of experiencing an  
4 opioid-related drug overdose;

5 (2) a family member, friend or other person in  
6 a position to assist a person at risk of experiencing an  
7 opioid-related drug overdose;

8 (3) an employee, volunteer or representative  
9 of a community-based entity providing overdose prevention and  
10 education services that is registered with the department; or

11 (4) a first responder.

12 G. A registered overdose prevention and education  
13 program that possesses, stores, distributes or administers an  
14 opioid antagonist in accordance with department rules and on  
15 standing orders from a licensed prescriber pursuant to this  
16 section shall not be subject to civil liability, criminal  
17 prosecution or professional disciplinary action arising from  
18 the possession, storage, distribution or administration of the  
19 opioid antagonist.

20 H. A person who possesses or who administers,  
21 dispenses or distributes an opioid antagonist to another person  
22 pursuant to this section shall not be subject to civil  
23 liability, criminal prosecution or professional disciplinary  
24 action as a result of the possession, administration,  
25 distribution or dispensing of the opioid antagonist.

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1           I. The department shall create, collect and  
2 maintain any individually identifiable information pursuant to  
3 this section in a manner consistent with state and federal  
4 privacy laws.

5           J. The secretary shall promulgate rules relating to  
6 overdose prevention and education programs:

7                   (1) establishing requirements and protocols  
8 for the registration of overdose prevention and education  
9 programs that are not licensed pharmacies;

10                   (2) monitoring registered overdose prevention  
11 and education programs' storage and distribution of opioid  
12 antagonists;

13                   (3) gathering data from overdose prevention  
14 and education programs to inform public health efforts to  
15 address overdose prevention efforts; and

16                   (4) authorizing standards for overdose  
17 prevention education curricula, training and the certification  
18 of individuals to store and distribute opioid antagonists for  
19 the overdose prevention and education program.

20           K. As used in this section:

21                   (1) "administer" means the direct application  
22 of a drug to the body of an individual by injection,  
23 inhalation, ingestion or any other means;

24                   (2) "department" means the department of  
25 health;

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1                   (3) "dispense" means to evaluate and implement  
2 a prescription for an opioid antagonist, including the  
3 preparation and delivery of a drug or device to a patient or  
4 patient's agent;

5                   (4) "distribute" means to deliver an opioid  
6 antagonist drug or opioid antagonist device by means other than  
7 by administering or dispensing;

8                   (5) "first responder" means any public safety  
9 employee or volunteer whose duties include responding rapidly  
10 to an emergency, including:

11                           (a) a law enforcement officer;

12                           (b) a firefighter or certified volunteer  
13 firefighter; or

14                           (c) emergency medical services  
15 personnel;

16                   (6) "licensed prescriber" means any individual  
17 who is authorized by law to prescribe an opioid antagonist in  
18 the state;

19                   (7) "opioid antagonist" means a drug approved  
20 by the federal food and drug administration that, when  
21 administered, negates or neutralizes in whole or in part the  
22 pharmacological effects of an opioid in the body. "Opioid  
23 antagonist" shall be limited to naloxone or other like  
24 medications that are indicated for use in reversing an opioid  
25 overdose and are approved by the department for such purpose;

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1                   (8) "possess" means to have physical control  
2 or custody of an opioid antagonist;

3                   (9) "registered overdose prevention and  
4 education program" means any community-based organization, law  
5 enforcement agency, detention facility or school that has  
6 registered with the department in accordance with department  
7 rules and uses an approved department curriculum to teach  
8 overdose prevention and opioid antagonist administration;

9                   (10) "standing order" means a licensed  
10 prescriber's instruction or prescribed procedure that is either  
11 patient specific or non-patient specific that can be exercised  
12 by other persons until changed or canceled by a licensed  
13 prescriber; and

14                   (11) "storage" means possession of an opioid  
15 antagonist with the intent to dispense or distribute it."

16           SECTION 2. Section 61-11-7 NMSA 1978 (being Laws 1969,  
17 Chapter 29, Section 6, as amended) is amended to read:

18           "61-11-7. DRUG DISPENSATION--LIMITATIONS.--

19           A. The Pharmacy Act does not prohibit:

20                   (1) [~~any~~] a hospital or state or county  
21 institution or clinic without the services of a staff  
22 pharmacist from acquiring and having in its possession [~~any~~] a  
23 dangerous drug for the purpose of dispensing if it is in a  
24 dosage form suitable for dispensing and if the hospital,  
25 institution or clinic employs a consulting pharmacist, and if

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1 the consulting pharmacist is not available, the withdrawal of  
2 [~~any~~] a drug from stock by a licensed professional nurse on the  
3 order of a licensed practitioner in such amount as needed for  
4 administering to and treatment of [~~his~~] a patient;

5 (2) the extemporaneous preparation by a  
6 licensed professional nurse on the order of a licensed  
7 practitioner of simple solutions for injection when the  
8 solution may be prepared from a quantity of drug that has been  
9 prepared previously by a pharmaceutical manufacturer or  
10 pharmacist and obtained by a hospital, institution or clinic in  
11 a form suitable for the preparation of the solution;

12 (3) the sale of nonnarcotic, nonpoisonous or  
13 nondangerous nonprescription medicines or preparations by  
14 nonregistered persons or unlicensed stores when sold in their  
15 original containers;

16 (4) the sale of drugs intended for veterinary  
17 use; provided that if [~~such~~] the drugs bear the legend:  
18 "Caution: federal law restricts this drug to use by or on the  
19 order of a licensed veterinarian", the drug may be sold or  
20 distributed only as provided in Subsection A of Section 26-1-15  
21 NMSA 1978, by a person possessing a license issued by the board  
22 pursuant to Subsection B of Section 61-11-14 NMSA 1978;

23 (5) the sale to or possession or  
24 administration of topical ocular pharmaceutical agents by  
25 licensed optometrists who have been certified by the board of

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1 optometry for the use of [~~such~~] the agents;

2 (6) the sale to or possession or  
3 administration of oral pharmaceutical agents as authorized in  
4 Subsection A of Section 61-2-10.2 NMSA 1978 by licensed  
5 optometrists who have been certified by the board of optometry  
6 for the use of [~~such~~] the agents;

7 (7) pharmacy technicians from providing  
8 assistance to pharmacists;

9 (8) a pharmacist from prescribing dangerous  
10 drug therapy, including vaccines and immunizations, under rules  
11 and protocols adopted by the board after approval by the New  
12 Mexico medical board [~~of medical examiners~~] and the board of  
13 nursing; [~~or~~]

14 (9) a pharmacist from exercising [~~his~~] the  
15 pharmacist's professional judgment in refilling a prescription  
16 for a prescription drug, unless prohibited by another state or  
17 federal law, without the authorization of the prescribing  
18 licensed practitioner, if:

19 (a) failure to refill the prescription  
20 might result in an interruption of a therapeutic regimen or  
21 create patient suffering;

22 (b) the pharmacist is unable to contact  
23 the licensed practitioner after reasonable effort;

24 (c) the quantity of prescription drug  
25 dispensed does not exceed a seventy-two-hour supply;

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1 (d) the pharmacist informs the patient  
2 or the patient's agent at the time of dispensing that the  
3 refill is being provided without [~~such~~] authorization and that  
4 authorization of the licensed practitioner is required for  
5 future refills; and

6 (e) the pharmacist informs the licensed  
7 practitioner of the emergency refill at the earliest reasonable  
8 time; or

9 (10) the possession, storage, distribution,  
10 dispensing, administration or prescribing of an opioid  
11 antagonist in accordance with the provisions of Section 24-23-1  
12 NMSA 1978.

13 B. All prescriptions requiring the preparation of  
14 dosage forms or amounts of dangerous drugs not available in the  
15 stock of a hospital, institution or clinic or a prescription  
16 requiring compounding shall be either compounded or dispensed  
17 only by a pharmacist."

18 SECTION 3. Section 61-11-22 NMSA 1978 (being Laws 1969,  
19 Chapter 29, Section 21, as amended) is amended to read:

20 "61-11-22. EXEMPTIONS FROM ACT.--

21 A. The Pharmacy Act does not apply to licensed  
22 practitioners in this state in supplying to their patients any  
23 drug if the licensed practitioner is practicing [~~his~~] the  
24 licensed practitioner's profession and does not keep a  
25 pharmacy, advertised or otherwise, for the retailing of

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dangerous drugs.

B. The Pharmacy Act does not prevent:

(1) the personal administration of drugs carried by a licensed practitioner in order to supply the immediate needs of ~~[his]~~ the licensed practitioner's patients; ~~[or]~~

(2) the sale of nonnarcotic proprietary preparations; or

(3) the possession, storage, dispensing, distribution, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978."

SECTION 4. REPEAL.--Section 24-23-2 NMSA 1978 (being Laws 2001, Chapter 228, Section 2) is repealed.