

HOUSE HEALTH COMMITTEE SUBSTITUTE FOR
HOUSE BILL 277

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

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; DECLARING AN EMERGENCY.

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; provided that actions are taken with
20 reasonable care and without willful, wanton or reckless
21 behavior.

22 H. A person who possesses or who administers,
23 dispenses or distributes an opioid antagonist to another person
24 pursuant to this section shall not be subject to civil
25 liability, criminal prosecution or professional disciplinary

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1 action as a result of the possession, administration,
2 distribution or dispensing of the opioid antagonist; provided
3 that actions are taken with reasonable care and without
4 willful, wanton or reckless behavior.

5 I. The department shall create, collect and
6 maintain any individually identifiable information pursuant to
7 this section in a manner consistent with state and federal
8 privacy laws.

9 J. The secretary shall promulgate rules relating to
10 overdose prevention and education programs:

11 (1) establishing requirements and protocols
12 for the registration of overdose prevention and education
13 programs that are not licensed pharmacies;

14 (2) monitoring registered overdose prevention
15 and education programs' storage and distribution of opioid
16 antagonists;

17 (3) gathering data from overdose prevention
18 and education programs to inform public health efforts to
19 address overdose prevention efforts; and

20 (4) authorizing standards for overdose
21 prevention education curricula, training and the certification
22 of individuals to store and distribute opioid antagonists for
23 the overdose prevention and education program.

24 K. As used in this section:

25 (1) "administer" means the direct application

1 of a drug to the body of an individual by injection,
2 inhalation, ingestion or any other means;

3 (2) "department" means the department of
4 health;

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

9 (4) "distribute" means to deliver an opioid
10 antagonist drug or opioid antagonist device by means other than
11 by administering or dispensing;

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

15 (a) a law enforcement officer;

16 (b) a firefighter or certified volunteer
17 firefighter; or

18 (c) emergency medical services
19 personnel;

20 (6) "licensed prescriber" means any individual
21 who is authorized by law to prescribe an opioid antagonist in
22 the state;

23 (7) "opioid antagonist" means a drug approved
24 by the federal food and drug administration that, when
25 administered, negates or neutralizes in whole or in part the

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1 pharmacological effects of an opioid in the body. "Opioid
2 antagonist" shall be limited to naloxone or other like
3 medications that are indicated for use in reversing an opioid
4 overdose and are approved by the department for such purpose;

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

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

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

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

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

22 "61-11-7. DRUG DISPENSATION--LIMITATIONS.--

23 A. The Pharmacy Act does not prohibit:

24 (1) ~~any~~ a hospital or state or county
25 institution or clinic without the services of a staff

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1 pharmacist from acquiring and having in its possession [~~any~~] a
2 dangerous drug for the purpose of dispensing if it is in a
3 dosage form suitable for dispensing and if the hospital,
4 institution or clinic employs a consulting pharmacist, and if
5 the consulting pharmacist is not available, the withdrawal of
6 [~~any~~] a drug from stock by a licensed professional nurse on the
7 order of a licensed practitioner in such amount as needed for
8 administering to and treatment of [~~his~~] a patient;

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

16 (3) the sale of nonnarcotic, nonpoisonous or
17 nondangerous nonprescription medicines or preparations by
18 nonregistered persons or unlicensed stores when sold in their
19 original containers;

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

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1 pursuant to Subsection B of Section 61-11-14 NMSA 1978;

2 (5) the sale to or possession or
3 administration of topical ocular pharmaceutical agents by
4 licensed optometrists who have been certified by the board of
5 optometry for the use of [~~such~~] the agents;

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

11 (7) pharmacy technicians from providing
12 assistance to pharmacists;

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

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

23 (a) failure to refill the prescription
24 might result in an interruption of a therapeutic regimen or
25 create patient suffering;

1 (b) the pharmacist is unable to contact
2 the licensed practitioner after reasonable effort;

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

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

10 (e) the pharmacist informs the licensed
11 practitioner of the emergency refill at the earliest reasonable
12 time; or

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

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

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

24 "61-11-22. EXEMPTIONS FROM ACT.--

25 A. The Pharmacy Act does not apply to licensed

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1 practitioners in this state in supplying to their patients any
2 drug if the licensed practitioner is practicing [~~his~~] the
3 licensed practitioner's profession and does not keep a
4 pharmacy, advertised or otherwise, for the retailing of
5 dangerous drugs.

6 B. The Pharmacy Act does not prevent:

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

11 (2) the sale of nonnarcotic proprietary
12 preparations; or

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

17 SECTION 4. REPEAL.--Section 24-23-2 NMSA 1978 (being Laws
18 2001, Chapter 228, Section 2) is repealed.

19 SECTION 5. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect immediately.