2022 South Dakota Legislature

House Bill 1086

AMENDMENT 1086A FOR THE INTRODUCED BILL

An Act to provide for the redistribution of donated prescription drugs and medical supplies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added:

Terms used in this Act mean:

(1) "Medical supply," any product necessary to administer a prescription drug; and

(2) "Participating pharmacy," a pharmacy that:

(a) Is licensed pursuant to chapter 36-11; and

(b) Has provided written notice to the State Board of Pharmacy regarding its intent to accept donated prescription drugs and medical supplies, in accordance with sections 2 through 6, inclusive, of this Act.

Section 2. That a NEW SECTION be added to title 34:

Except as otherwise provided in this section, a participating pharmacy may accept a donation of prescriptions drugs and medical supplies if:

(1) The drugs and medical supplies are in the original, sealed, and tamper-evident packaging, unless the drugs are in single-unit-dose packaging and the single-unit-dose packaging is unopened; and

(2) The expiration date is at least six months after the date of donation, unless the State Board of Pharmacy has determined that the drug or medical supply is in high demand and dispensable before the expiration date.

A participating pharmacy may not accept the donation of any controlled substance or any drug that has physical signs of tampering, misbranding, deterioration, compromised integrity, or adulteration.

A participating pharmacy may not accept the donation of or distribute any drug subject to the requirements of 21 U.S.C. 355-1(f)(3), as of January 1, 2022.

Section 3. That a NEW SECTION be added to title 34:

A donated drug or medical supply may not be dispensed until a pharmacist, holding a permit issued in accordance with § 36-11-32, has inspected the drug or medical supply and repackaged it, as necessary, for dispensing.

Section 4. That a NEW SECTION be added to title 34:

A participating pharmacy shall:

(1) Comply with all applicable federal and state laws regarding the storage and dispensing of any donated drugs and medical supplies;

(2) Accept a prescription transferred pursuant to rules promulgated in accordance with chapter 1-26 by the State Board of Pharmacy; and

(3) Agree to transfer any donated prescription drug or medical supply in the pharmacy's inventory to another licensed pharmacy, for use by a person who meets the eligibility criteria in accordance with section 7 of this Act.

Section 5. That a NEW SECTION be added to title 34:

A drug or medical supply that has been donated may not be resold or considered eligible for reimbursement under the medical assistance program, as set forth in chapter 28-6.

Nothing in this section requires a health plan or pharmacy benefit manager to be reimbursed for donated drugs or medical supplies.

Section 6. That a NEW SECTION be added to title 34:

A participating pharmacy may charge a fee, in an amount established by the State Board of Pharmacy, for accepting, distributing, or dispensing donated prescription drugs and medical supplies.

Section 7. That a NEW SECTION be added to title 34:

The State Board of Pharmacy shall promulgate rules, in accordance with chapter 1-26, to:

(1) Establish eligibility criteria for persons to receive donated drugs and medical supplies, provided the criteria:

(a) Prioritize persons who are indigent or without insurance coverage; and

(b) Permit dispensing to other persons, if the supply of a donated drug or supply exceeds demand;

(2) Establish standards and procedures for the acceptance, storage, and dispensing of donated prescription drugs and medical supplies;

(3) Establish standards and procedures for the inspection of donated prescription drugs and medical supplies;

(4) Establish the fee that a participating pharmacy may charge for accepting, distributing, and dispensing donated prescription drugs and medical supplies, provided the fee does not exceed the reasonable cost incurred by the pharmacy; and

(5) Develop and make available any forms necessary for the donation, acceptance, and dispensing of donated drugs and medical supplies.

Section 8. That a NEW SECTION be added to title 34:

A drug manufacturer, acting reasonably and in good faith, is not subject to criminal prosecution, or civil liability, for the death of or injury to a person, or for damage to or destruction of property, resulting from any donation, acceptance, or dispensing of a prescription drug under sections 2 through 6, inclusive, of this Act, nor for any failure to transfer or communicate product information.

Any person, other than a drug manufacturer referenced in this section, acting reasonably and in good faith, is not subject to:

(1) Criminal prosecution or civil liability, for:

(a) The death of, or injury to another person who received a donated prescription drug or medical supply under sections 2 through 6, inclusive, of this Act;

(b) Damage to or destruction of property resulting from the donation of a prescription drug or medical supply under sections 2 through 6, inclusive, of this Act; or

(2) Disciplinary action for any act or omission related to the donation, acceptance, distribution, or dispensing of a donated prescription or medical supply, in accordance with sections 2 through 6, inclusive, of this Act.

Section 9. That a NEW SECTION be added to title 34:

The State Board of Pharmacy shall develop and maintain, for use by prescribers and pharmacists, an electronic database that provides a searchable inventory of prescription drugs and medical supplies donated under this Act.

The board shall post a current list of participating pharmacies on the board's website.

AMENDMENT