

ASSEMBLY, No. 2160

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Prohibits certain steering and marketing practices involving dispensing of prescription drugs and drug samples.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning prescription drugs and drug samples and
2 supplementing Title 45 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. a. It shall be unlawful for a drug manufacturer, pharmacy,
8 wholesaler, or other medication supply intermediary to enter into
9 any agreement with a health care practitioner to dispense
10 prescription drugs and drug samples using a device, kiosk, machine,
11 or other system which directs or diverts patients to a specified
12 pharmacy or pharmacist for the filling of prescriptions, or which
13 restrains in any way a patient's choice when selecting a pharmacy
14 or pharmacist.

15 b. A practitioner or a practitioner's authorized designee shall
16 not dispense prescription drugs and drug samples using a device,
17 kiosk, machine, or other system which transmits a patient's
18 information to a particular pharmacy or pharmacist, unless:

19 (1) the patient has voluntarily, on the patient's own volition and
20 without prompting from the practitioner or designee, requested the
21 information be transmitted to that pharmacy or pharmacist; or

22 (2) the practitioner or designee provides the patient with full
23 disclosure that the patient's information will be transmitted to the
24 pharmacy or pharmacist, and informs the patient of the patient's
25 right to have the patient's information transmitted to the pharmacy
26 or pharmacist of the patient's own choosing and of the right not to
27 have the patient's information transmitted to a pharmacy or
28 pharmacist in connection with the dispensing of the prescription
29 drug.

30 c. If a drug manufacturer, pharmacy, wholesaler, or other
31 medication supply intermediary violates the provisions of
32 subsection a. of this section, the drug manufacturer, pharmacy,
33 wholesaler, or other medication supply intermediary shall be liable
34 to a civil penalty of not less than \$100,000 for the first violation,
35 not less than \$200,000 for the second violation, and not less than
36 \$400,000 for the third and each subsequent violation.

37 If a practitioner or designee violates the provisions of subsection
38 b. of this section, the practitioner shall be liable to a civil penalty of
39 not less than \$250 for the first violation, not less than \$500 for the
40 second violation, and not less than \$1,000 for the third and each
41 subsequent violation.

42 The penalty shall be collected pursuant to the "Penalty
43 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),
44 in a summary proceeding before the municipal court having
45 jurisdiction. An official authorized by statute or ordinance to
46 enforce the State or local health codes or a law enforcement officer
47 having enforcement authority in that municipality may issue a
48 summons for a violation of the provisions of this section, and may

1 serve and execute all process with respect to the enforcement of this
2 section consistent with the Rules of Court.

3 A penalty recovered under the provisions of this section shall be
4 recovered by and in the name of the State by the local health
5 agency. The penalty shall be paid into the treasury of the
6 municipality in which the violation occurred for the general uses of
7 the municipality.

8 d. Nothing in this section shall be construed to revise or expand
9 the authority of health care practitioners to dispense prescription
10 drugs as provided by law.

11

12 2. a. A device, kiosk, machine, or other system for the
13 dispensing of prescription drugs to patients, including drug samples,
14 shall not utilize a patient's individually identifiable medical
15 information as a marketing tool, or sell or otherwise provide a
16 patient's individually identifiable medical information to any other
17 entity, in an effort to promote a particular pharmacy, preferred
18 pharmacy plan, or a particular medication whether in the form of a
19 sample or prescription without first obtaining authorization
20 pursuant to 45 C.F.R. s.164.508. The patient shall be notified of the
21 patient's right to file a complaint related to a breach of the patient's
22 right to privacy or failure to provide notice regarding any of the
23 required disclosures, and shall be notified of a point of contact for
24 the complaint process. A device, kiosk, machine, or other system
25 shall not limit the patient's ability to access drugs through the
26 device, kiosk, machine, or other system based on the patient's
27 choice not to provide authorization pursuant to this paragraph.

28 b. A device, kiosk, machine, or other system for the dispensing
29 of prescription drugs to patients, including drug samples, shall
30 notify a patient of any charges to the patient's insurance provider
31 that is related to the transmittal of the patient's individually
32 identifiable medical information, or any benefits, services, or
33 products the patient may receive by using the device, kiosk,
34 machine, or other system.

35 c. The operator of a device, kiosk, machine, or other system
36 that is in violation of this section shall be subject to such penalties
37 as are applicable under State and federal law.

38

39 3. This act shall take effect immediately.

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STATEMENT

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44 This bill prohibits certain steering and other marketing practices
45 involving devices, kiosks, machines, and other systems for the
46 dispensing of prescription drugs to patients, including drug samples.

47 This bill prohibits drug manufacturers, pharmacies, wholesalers,
48 or other medication supply intermediaries from entering into

1 agreements with health care practitioners to dispense prescription
2 drugs and drug samples using a device, kiosk, machine, or other
3 system which directs or diverts patients to a specified pharmacy or
4 pharmacist for the filling of prescriptions, or which restrains in any
5 way a patient's choice when selecting a pharmacy or pharmacist.
6 This practice, which is sometimes referred to as "steering,"
7 improperly restricts patient choice.

8 If a drug manufacturer, pharmacy, wholesaler, or other
9 medication supply intermediary violates this provision, the drug
10 manufacturer, pharmacy, wholesaler, or other medication supply
11 intermediary would be liable to a civil penalty of not less than
12 \$100,000 for the first violation, not less than \$200,000 for the
13 second violation, and not less than \$400,000 for the third and each
14 subsequent violation.

15 A practitioner or designee would not be permitted to dispense
16 prescription drugs and drug samples using a device, kiosk, machine,
17 or other system which transmits a patient's information to a
18 particular pharmacy or pharmacist, unless either: (1) the patient has,
19 voluntarily and without any prompting from the practitioner,
20 requested the information be transmitted to that pharmacy or
21 pharmacist; or (2) the practitioner or designee provides the patient
22 with full disclosure that the patient's information will be
23 transmitted to the pharmacy or pharmacist, and informs the patient
24 of the patient's right to have the patient's information transmitted to
25 the pharmacy or pharmacist of the patient's own choosing and of
26 the right not to have the patient's information transmitted to any
27 pharmacy or pharmacist in connection with the dispensing of the
28 drug.

29 If a practitioner or designee violates the provisions of the bill,
30 the practitioner would be liable to a civil penalty of not less than
31 \$250 for the first violation, not less than \$500 for the second
32 violation, and not less than \$1,000 for the third and each subsequent
33 violation, which would be recovered by and in the name of the State
34 by the local health agency and be paid into the treasury of the
35 municipality in which the violation occurred for the general uses of
36 the municipality.

37 Nothing in the bill would be construed to expand or revise the
38 authority of a health care practitioner to dispense prescription drugs
39 under current law.

40 In addition, the bill incorporates into State law certain
41 requirements of the federal health information privacy rule
42 authorized under the federal "Health Insurance Portability and
43 Accountability Act of 1996" (HIPAA), as applicable to devices,
44 kiosks, machines, and other systems for the dispensing of
45 prescription drugs to patients, including drug samples. The bill
46 would prohibit such a device, kiosk, machine, or other system from
47 utilizing a patient's individually identifiable medical information as
48 a marketing tool, or selling or otherwise providing a patient's

1 individually identifiable medical information to any other entity, in
2 an effort to promote a particular pharmacy, preferred pharmacy
3 plan, or a particular medication whether in the form of a sample or
4 prescription without first obtaining authorization pursuant to 45
5 C.F.R. s.164.508. A device, kiosk, machine, or other system would
6 be prohibited from limiting a patient's ability to access drugs
7 through the device, kiosk, machine, or other system based on the
8 patient's choice not to provide authorization to use the patient's
9 medical information.

10 The bill also requires a device, kiosk, machine, or other system
11 for the dispensing of prescription drugs to patients, including drug
12 samples, to notify a patient of any charges to the patient's insurance
13 provider that is related to the transmittal of the patient's
14 individually identifiable medical information, or any benefits,
15 services, or products the patient may receive by using the device,
16 kiosk, machine, or other system.

17 The operator of the device, kiosk, machine, or other system that
18 is in violation of the bill would be subject to such penalties as may
19 be applicable under State or federal law.