H. B. No. 895
(As Passed the House)

HOUSE BILL NO. 895
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AN ACT TO ESTABLISH UNDER THE DIRECTION OF THE STATE BOARD OF
PHARMACY A DRUG REPOSITORY PROGRAM TO ACCEPT AND DISPENSE
PRESCRIPTION DRUGS DONATED FOR THE PURPOSE OF BEING DISPENSED TO
INDIVIDUALS WHO MEET CERTAIN ELIGIBILITY STANDARDS; TO PROVIDE
THAT THE PROGRAM SHALL BE DEVELOPED JOINTLY BY THE STATE BOARD OF
PHARMACY, THE STATE DEPARTMENT OF HEALTH AND THE DIVISION OF
MEDICAID; TO PROVIDE THE CRITERIA FOR DRUGS TO BE ACCEPTED AND
DISPENSED UNDER THE PROGRAM; TO PROVIDE CERTAIN IMMUNITY TO
PARTICIPANTS IN THE PROGRAM; TO PROVIDE THAT THE PROGRAM WILL BE
FULLY IMPLEMENTED NOT LATER THAN JULY 1, 2004; AND FOR RELATED
PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. As used in this act, the following terms have the
following meanings, unless the context requires otherwise:

(a) "Board" means the State Board of Pharmacy.

(b) "Health care facility" means any of the following:

(i) A hospital as defined under Section 41-9-3;

(ii) An institution for the aged or infirm as
defined in Section 43-11-1;

(iii) A home health agency as defined in Section
41-71-1;

(iv) A hospice as defined in Section 41-85-3;

(c) "Hospital" has the meaning as defined in Section
41-9-3.

(d) "Nonprofit clinic" means a charitable nonprofit

corporation organized and operated under Section 79-11-101 et
seq., or any charitable organization not organized and not
operated for profit, that provides health care services to
indigent and uninsured persons. "Nonprofit clinic" does not
include a health care facility as defined in this section, or a
facility that is operated for profit.
(e) "Pharmacy" has the meaning as defined under Section 73-21-73.

(f) "Prescription drug" means any drug to which the following applies:

(i) Under the federal Food, Drug, and Cosmetic Act, as amended (21 USCS Section 301), the drug is required to bear a label containing the legend, "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription.

(ii) Under the Uniform Controlled Substances Law, (Section 41-29-101 et seq.), the drug may be dispensed only upon a prescription.

SECTION 2. (1) Not later than January 1, 2005, the State Board of Pharmacy, the State Department of Health and the Division of Medicaid jointly shall establish a plan for a drug repository program to accept and dispense prescription drugs donated for the purpose of being dispensed to individuals who meet the eligibility standards established in the rules adopted by the board under Section 5 of this act. The plan shall be submitted to the Chairmen of the Public Health and Welfare Committees of the Mississippi House of Representatives and Senate for their review.

Under the drug repository program:

(a) Only drugs in their original sealed and tamper-evident packaging may be accepted and dispensed.

(b) The packaging must be unopened, except that drugs packaged in single unit doses may be accepted and dispensed when the outside packaging is opened if the single unit dose packaging is undisturbed.

(c) The drugs must have been properly stored such that the integrity of the medicine remains intact.
(d) A drug shall not be accepted or dispensed if there is reason to believe that it is adulterated as described in Section 75-29-3.

(e) Subject to the limitation specified in this subsection, unused drugs dispensed for the purposes of the Medicaid program may be accepted and dispensed.

(2) Nothing in subsection (1) of this section shall be construed as prohibiting a pharmacy from accepting drugs that are not eligible to be dispensed under the drug repository program, for the proper disposal of those drugs.

(3) The drug repository program shall be fully implemented not later than July 1, 2005.

SECTION 3. (1) Any person, including a drug manufacturer, health care facility or government entity may donate prescription drugs to the drug repository program. The drugs must be donated at a pharmacy, hospital, or nonprofit clinic that participates in the drug repository program under the criteria for participation established in the rules adopted by the board under Section 5 of this act.

(2) A pharmacy, hospital, or nonprofit clinic that participates in the drug repository program shall dispense drugs donated under this section to individuals who meet the eligibility standards established in the rules adopted by the board under Section 5 of this act, or to other government entities and nonprofit private entities to be dispensed to individuals who meet the eligibility standards. A drug may be dispensed only pursuant to a prescription issued by a licensed practitioner as defined in Section 73-21-73. A pharmacy, hospital, or nonprofit clinic that accepts donated drugs shall comply with all applicable federal laws and laws of this state dealing with storage and distribution of dangerous drugs, and shall inspect all drugs before dispensing them to determine that they are not adulterated. The pharmacy, hospital, or nonprofit clinic may charge individuals receiving...
donated drugs a handling fee established in accordance with the rules adopted by the board under Section 5 of this act. Drugs donated to the repository may not be resold.

SECTION 4. (1) As used in this section, the term "health care professional" means any of the following:

(a) Physicians and osteopaths licensed under Section 73-25-1 et seq.;
(b) Podiatrists licensed under Section 73-27-1 et seq.;
(c) Dentists and dental hygienists licensed under Section 73-9-1 et seq.;
(d) Optometrists licensed under Section 73-19-1 et seq.;
(e) Pharmacists licensed under Section 73-21-71 et seq.;
(f) Registered nurses and licensed practical nurses licensed under Section 73-15-1 et seq.; and
(g) Physician assistants licensed under Section 73-26-1 et seq.

(2) The State Board of Pharmacy; the State Department of Health; the Division of Medicaid; any person, including a drug manufacturer, or health care facility or government entity that donates drugs to the repository program; any pharmacy, hospital, nonprofit clinic or health care professional that accepts or dispenses drugs under the program; and any pharmacy, hospital, or nonprofit clinic that employs a health care professional who accepts or dispenses drugs under the program, shall not, in the absence of bad faith, be subject to any of the following for matters related to donating, accepting, or dispensing drugs under the program: criminal prosecution; liability in tort or other civil action for injury, death, or loss to person or property; or professional disciplinary action.

A drug manufacturer shall not, in the absence of bad faith, be subject to criminal prosecution or liability in tort or other
civil action for injury, death, or loss to person or property for matters related to the donation, acceptance, or dispensing of a drug manufactured by the drug manufacturer that is donated by any person, health care facility or government entity under the program, including, but not limited to, liability for failure to transfer or communicate product or consumer information or the expiration date of the donated drug.

SECTION 5. (1) Not later than January 1, 2005, the State Board of Pharmacy, in consultation with the State Department of Health and the Division of Medicaid, shall adopt rules, in accordance with the Administrative Procedures Law (Section 25-43-1 et seq.), governing the drug repository program that establish all of the following:

(a) Eligibility criteria for pharmacies, hospitals, and nonprofit clinics to receive and dispense donated drugs under the program;

(b) Standards and procedures for accepting, safely storing, and dispensing donated drugs;

(c) Standards and procedures for inspecting donated drugs to determine that the original unit dose packaging is sealed and tamper-evident and that the drugs are unadulterated, safe, and suitable for dispensing;

(d) Eligibility standards based on economic need for individuals to receive drugs;

(e) A means, such as an identification card, by which an individual who is eligible to receive donated drugs may demonstrate eligibility to the pharmacy, hospital, or nonprofit clinic dispensing the drugs;

(f) A form that an individual receiving a drug from the repository must sign before receiving the drug to confirm that the individual understands the immunity provisions of the program;
(g) A formula to determine the amount of a handling fee that pharmacies, hospitals, and nonprofit clinics may charge to drug recipients to cover restocking and dispensing costs;

(h) In addition, for drugs donated to the repository by individuals:

(i) A list of drugs, arranged either by category or by individual drug, that the repository will accept from individuals;

(ii) A list of drugs, arranged either by category or by individual drug, that the repository will not accept from individuals. The list must include a statement as to why the drug is ineligible for donation; and

(iii) A form each donor must sign stating that the donor is the owner of the drugs and intends to voluntarily donate them to the repository;

(i) In addition, for drugs donated to the repository by health care facilities or government entities:

(i) A list of drugs, arranged either by category or by individual drug, that the repository will accept from health care facilities or government entities; and

(ii) A list of drugs, arranged either by category or by individual drug, that the repository will not accept from health care facilities or government entities. The list must include a statement as to why the drug is ineligible for donation; and

(j) Any other standards and procedures the board considers appropriate.

(2) The provisions of paragraphs (h)(ii) and (i)(ii) of subsection (1) of this section shall not be construed as prohibiting a pharmacy from accepting drugs that are not eligible to be dispensed under the drug repository program, for the proper disposal of those drugs.
SECTION 6. This act shall take effect and be in force from and after July 1, 2003.