

By: Cook

H.B. No. 89

A BILL TO BE ENTITLED

AN ACT

relating to a drug donation program.

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

SECTION 1. Subtitle A, Title 6, Health and Safety Code, is amended by adding Chapter 442 to read as follows:

CHAPTER 442. DRUG DONATION PROGRAM

Sec. 442.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Program" means the drug donation program.

Sec. 442.002. DRUG DONATION PROGRAM. The department shall establish and maintain a drug donation program through which a person may donate to a participating pharmacy or health care facility an eligible drug for use by an individual who meets the eligibility requirements under Section 442.008.

Sec. 442.003. DONATION. The following persons may donate drugs at a pharmacy or health care facility that participates in the program:

(1) an individual who is at least 18 years of age; or

(2) a pharmacy or health care facility or a

manufacturer or distributor of an eligible drug.

Sec. 442.004. DRUGS ELIGIBLE FOR PROGRAM. The Texas State Board of Pharmacy and the Texas Medical Board shall adopt rules regarding drugs that are eligible for the program, including rules regarding:

(1) the inclusion of drugs used for the treatment of cancer;

(2) the inclusion of non-cancer-related drugs that cost more than \$50;

(3) the prohibition of a controlled substance from eligibility; and

(4) a list of eligible drugs.

Sec. 442.005. DISTRIBUTION OF DONATED DRUGS. A pharmacy or health care facility that receives a donated drug through the program may distribute the drug to an eligible pharmacy or health care facility for use under the program.

Sec. 442.006. DISPENSATION OF DONATED DRUGS. (a) A pharmacy or health care facility may accept and dispense a drug through the program only if each of the following conditions is met:

(1) the drug must be in the drug's original, unopened, sealed, and tamper-evident unit dose packaging and include the drug's lot number and expiration date, or if packaged in single unit doses, the single unit dose packaging must be unopened;

(2) the drug must have an expiration date later than 120 days after the date the drug was donated;

(3) the drug must be unadulterated and correctly branded;

1 (4) the drug must be accompanied by the signed donor
2 form under Section 442.009; and

3 (5) the drug must be inspected by a pharmacist to
4 ensure compliance with Subdivisions (1)-(4) before the pharmacist
5 may dispense the drug.

6 (b) A drug dispensed through the program must be prescribed
7 by a medical practitioner for use by an eligible individual and
8 dispensed by a pharmacist.

9 (c) A pharmacy or health care facility that dispenses a drug
10 through the program may charge an individual who receives the drug a
11 fee not to exceed the amount specified by executive commissioner
12 rule.

13 (d) A drug dispensed through the program may not be resold.

14 Sec. 442.007. RULES. The executive commissioner shall
15 adopt rules regarding the following:

16 (1) procedures regarding the storage of donated drugs,
17 including environmental conditions, separation of donated drugs
18 from non-donated drugs, and security; and

19 (2) recordkeeping of donor and recipient forms
20 required under Section 442.009.

21 Sec. 442.008. ELIGIBILITY REQUIREMENTS. (a) A person is
22 eligible to receive drugs through the program if the person is:

23 (1) uninsured, underinsured, or a recipient of
24 benefits through the medical assistance program under Chapter 32,
25 Human Resources Code, or Medicare; or

26 (2) a resident of this state who has been diagnosed
27 with cancer.

1 (b) The department shall prioritize dispensation to
2 individuals who are uninsured or indigent and shall permit
3 dispensation to other eligible individuals if an uninsured or
4 indigent individual is unavailable.

5 Sec. 442.009. DONOR FORM. (a) The department shall develop
6 forms for individuals who donate drugs to the program and for
7 recipients of drugs through the program.

8 (b) A person who donates a drug shall sign the donor form.

9 (c) A recipient of drugs through the program shall sign a
10 form that indicates the donated drug may have been previously
11 dispensed.

12 Sec. 442.010. REGISTRY FOR ELIGIBLE RECIPIENTS. The
13 department shall establish a voluntary registry for individuals who
14 are eligible to receive drugs through the program.

15 Sec. 442.011. REGISTRY OF PARTICIPATING PHARMACIES. The
16 department shall establish on the department's website a voluntary
17 registry for pharmacies and health care facilities participating in
18 the program.

19 Sec. 442.012. LIMITATION ON LIABILITY. (a) A pharmacy,
20 health care facility, physician, or pharmacist that participates in
21 the program under this chapter is not liable for harm caused by the
22 accepting, dispensing, or administering of drugs donated and
23 dispensed in substantial compliance with this chapter unless the
24 harm is caused by:

25 (1) wilful or wanton acts of negligence;

26 (2) conscious indifference or reckless disregard for
27 the safety of others; or

1 (3) intentional conduct.

2 (b) This section does not limit, or in any way affect or
3 diminish, the liability of a drug seller or manufacturer under
4 Chapter 82, Civil Practice and Remedies Code.

5 (c) This section does not apply if harm results from the
6 failure to fully and completely comply with the requirements of
7 Section 442.006 or rules adopted under this chapter.

8 (d) This section does not apply to a pharmacy, health care
9 facility, pharmacist, physician, or manufacturer that fails to
10 comply with the insurance provisions of Chapter 84, Civil Practice
11 and Remedies Code.

12 (e) Nothing in this chapter requires a pharmacy,
13 pharmacist, or medical practitioner to participate in the program.
14 Nothing in this chapter requires a person to donate drugs to the
15 program.

16 Sec. 442.013. OTHER LAW. The drug donation program
17 established under this chapter is in addition to the method for
18 redistribution of unused drugs established by Section 562.1085,
19 Occupations Code, and the drug donation program established under
20 Subchapter M, Chapter 431.

21 SECTION 2. If before implementing any provision of this Act
22 a state agency determines that a waiver or authorization from a
23 federal agency is necessary for implementation of that provision,
24 the agency affected by the provision shall request the waiver or
25 authorization and may delay implementing that provision until the
26 waiver or authorization is granted.

27 SECTION 3. This Act takes effect September 1, 2011.