

## LEGISLATIVE BILL 667

Approved by the Governor May 13, 2003

Introduced by Jensen, 20; Aguilar, 35; Byars, 30; Combs, 32

AN ACT relating to public health and welfare; to amend sections 20-127, 20-129, 71-2406, and 71-5408, Reissue Revised Statutes of Nebraska, and sections 71-140, 71-1,148, 71-1,235, 71-514.02, 71-2407, 71-2408, 71-2409, 71-5185, 71-51,102, 71-5402 to 71-5407, 81-6,107, and 81-6,110, Revised Statutes Supplement, 2002; to change provisions relating to rights of disabled persons; to change and provide penalties; to change provisions relating to the licensing of pharmacists and mail service pharmacies, the licensing of respiratory care practitioners, the release of patient data under the Emergency Medical Services Act, and automated external defibrillators; to rename the Mail Service Prescription Drug Act; to redefine infectious disease; to change and eliminate provisions relating to the Nebraska Drug Product Selection Act; to opt out of certain federal food stamp provisions; to eliminate certain provisions of the Parkinson's Disease Registry Act; to eliminate the Community-Based Neurobehavioral Action Plan Act; to define and redefine terms; to transfer and harmonize provisions; to repeal the original sections; and to outright repeal section 71-5401, Reissue Revised Statutes of Nebraska, and sections 79-11,142 to 79-11,149 and 81-6,108, Revised Statutes Supplement, 2002.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 20-127, Reissue Revised Statutes of Nebraska, is amended to read:

20-127. (1) ~~Any~~ A blind, visually handicapped, ~~hearing-impaired deaf or hard of hearing~~, or physically disabled person ~~shall have~~ has the same right as ~~an able-bodied~~ any other person to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) ~~Any~~ A blind, visually handicapped, ~~hearing-impaired deaf or hard of hearing~~, or physically disabled person ~~shall be~~ is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(3) ~~Every~~ A totally or partially blind person ~~shall have~~ has the right to be accompanied by a dog guide, ~~every hearing-impaired a deaf or hard of hearing person shall have~~ has the right to be accompanied by a hearing ~~aid~~ dog, ~~and every~~ a physically disabled person shall have has the right to be accompanied by a service dog, especially trained for the purpose, and a bona fide trainer of a dog guide, hearing dog, or service dog has the right to be accompanied by such dog in training in any of the places listed in subsection (2) of this section without being required to pay an extra charge for the dog guide, hearing aid dog, or service dog. Such person shall be liable for any damage done to the premises or facilities or to any person by such dog.

(4) ~~Every~~ A totally or partially blind person ~~shall have~~ has the right to make use of a white cane in any of the places listed in subsection (2) of this section.

Sec. 2. Section 20-129, Reissue Revised Statutes of Nebraska, is amended to read:

20-129. (1) ~~Any person, firm, or corporation or the agent of any person, firm, or corporation~~ or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a totally or partially blind, ~~hearing-impaired deaf or hard of hearing~~, or physically disabled person under section 20-127 or sections 20-131.01 to 20-131.04 ~~shall be~~ is guilty of a Class III misdemeanor.

(2) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a bona fide trainer of a dog guide, hearing dog, or service dog when training such dog under section 20-127 is guilty of a Class III misdemeanor.

Sec. 3. Section 71-140, Revised Statutes Supplement, 2002, is amended to read:

71-140. The Board of Pharmacy may recommend to the department the ~~registration~~ licensure as a pharmacist, without examination, of any person who is duly so ~~registered~~ licensed by examination in some other state or jurisdiction in which, under like conditions, reciprocal ~~registration licensure~~ as a pharmacist, without examination, is granted to pharmacists duly ~~registered~~ licensed by examination in this state. The applicant shall produce evidence satisfactory to the board of having had the required secondary and professional education and training, of having been ~~actively engaged in the practice under such registration or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for reciprocal registration~~ a licensed pharmacist in good standing in another state or jurisdiction, and of being possessed of having good character and morals, as demanded of applicants for registration licensure under sections 71-1,142 to 71-1,147. Persons of good character who have become licensed or registered as pharmacists by examination in other states prior to September 1, 1939, shall be required to meet only the requirements which existed in this state at the time when they became licensed or registered in such other state.

Sec. 4. Section 71-1,148, Revised Statutes Supplement, 2002, is amended to read:

71-1,148. The department, upon recommendation of the board, shall adopt and promulgate rules and regulations as deemed necessary to implement sections 28-1437 to 28-1439.01, 71-1,142 to 71-1,151, 71-2401 to 71-2405, and 71-2501 to 71-2512, the Mail Service ~~Prescription Drug~~ Pharmacy Licensure Act, the Nebraska Drug Product Selection Act, and the Uniform Controlled Substances Act. The minimum standards and requirements for the practice of pharmacy, including dispensing pursuant to a delegated dispensing permit, shall be consistent with the minimum standards and requirements established by the department for pharmacy licenses under the Health Care Facility Licensure Act.

Sec. 5. Section 71-1,235, Revised Statutes Supplement, 2002, is amended to read:

71-1,235. Sections 71-1,227 to 71-1,237 shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional licensed under the Uniform Licensing Law when such practice is within the scope of practice for which that person is licensed;

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties; ~~or~~

(5) Techniques defined as pulmonary function testing and the administration of aerosol and inhalant medications to the cardiorespiratory system as it relates to pulmonary function technology administered by a registered pulmonary function technologist credentialed by the National Board for Respiratory Care or a certified pulmonary function technologist credentialed by the National Board for Respiratory Care; or

(6) The performance of oxygen therapy or the initiation of noninvasive positive pressure ventilation by a registered polysomnographic technologist relating to the study of sleep disorders if such procedures are performed or initiated under the supervision of a licensed physician at a facility accredited by the American Academy of Sleep Medicine.

Sec. 6. Section 71-514.02, Revised Statutes Supplement, 2002, is amended to read:

71-514.02. For purposes of sections 71-514.01 to 71-514.05:

(1) Health care provider means a person who provides care to a patient which is designed to improve the status of his or her health whether this care is rendered in the hospital or community setting and whether the provider is paid or voluntary. Health care provider does not mean an emergency services provider as defined in section 71-507;

(2) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the Department of Health and Human Services Regulation and Licensure may from time to time specify;

(3) Patient means an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(4) Provider agency means any health care facility or agency which is in the business of providing health care services; and

(5) Significant exposure to blood or other body fluid means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other materials known to transmit infectious diseases that results from providing care.

Sec. 7. Section 71-2406, Reissue Revised Statutes of Nebraska, is amended to read:

71-2406. Sections 71-2406 to 71-2409 shall be known and may be cited as the Mail Service ~~Prescription Drug~~ Pharmacy Licensure Act.

Sec. 8. Section 71-2407, Revised Statutes Supplement, 2002, is amended to read:

71-2407. (1) ~~No~~ Any person operating a mail service pharmacy outside of the State of Nebraska shall ~~ship, mail~~ obtain a mail service pharmacy license prior to shipping, mailing, or in any manner ~~deliver~~ delivering dispensed prescription drugs as defined in section 71-1,142 into the State of Nebraska. unless such person:

~~(a) Is licensed as a pharmacist in the United States;~~

~~(b) Has filed with the Department of Health and Human Services Regulation and Licensure evidence of~~

(2) To be qualified to hold a mail service pharmacy license, a person shall:

(a) Hold a pharmacy license or permit issued by and valid in the state in which the person is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

~~(e) Is~~ (b) Be located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services Regulation and Licensure, with the approval of the Board of Pharmacy, to be substantially equivalent to the requirements of the Health Care Facility Licensure Act;

~~(d) Has designated~~ (c) Designate the Secretary of State as his, her, or its agent for service of process in this state; and

~~(e) Has paid~~ (d) Employ on a full-time basis at least one pharmacist who holds a current unrestricted pharmacist license issued under the Uniform Licensure Law who shall be responsible for compliance by the mail service pharmacy with the Mail Service Pharmacy Licensure Act. The mail service pharmacy shall notify the department when such pharmacist is no longer employed by such pharmacy.

(3) To obtain a mail service pharmacy license, a person shall:

(a) File an application on a form developed by the department; and

(b) Pay a fee equivalent to the fee for a pharmacy license in the State of Nebraska pursuant to section 71-434.

~~(2)~~ (4) This section does not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

~~(3) For purposes of this section and section 71-2408, prescription drug has the definition of prescription drug or device as found in section 71-1,142.~~

Sec. 9. Section 71-2408, Revised Statutes Supplement, 2002, is amended to read:

71-2408. (1) The Department of Health and Human Services Regulation and Licensure, after notice and an opportunity for a hearing, may deny, refuse renewal of, revoke, or otherwise discipline or restrict the license of a mail service pharmacy for (a) any discipline of the pharmacy license held by such pharmacy in another state pursuant to subdivision (2)(a) of section 71-2407, (b) any violation of the Mail Service Pharmacy Licensure Act or rules and regulations adopted and promulgated under the act, or (c) conduct by such pharmacy which in this state presents a threat to the public health and safety or a danger of death or physical harm.

(2) The Department of Health and Human Services Regulation and Licensure department, upon the recommendation of the Board of Pharmacy, shall notify the Attorney General of any possible violations of the Mail Service ~~Prescription Drug~~ Pharmacy Licensure Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, he or she shall commence an action in the district court of Lancaster County to enjoin any such person from further mailing, shipping, or otherwise delivering prescription drugs into the State of Nebraska.

Sec. 10. Section 71-2409, Revised Statutes Supplement, 2002, is amended to read:

71-2409. The Department of Health and Human Services Regulation and Licensure shall, upon the recommendation of the Board of Pharmacy, adopt and promulgate rules and regulations, ~~including rules and regulations for enforcement,~~ necessary to carry out the Mail Service Prescription Drug Pharmacy Licensure Act.

Sec. 11. Section 71-5185, Revised Statutes Supplement, 2002, is amended to read:

71-5185. (1) No patient data received or recorded by an emergency medical service or an out-of-hospital emergency care provider shall be divulged, made public, or released by an emergency medical service or an out-of-hospital emergency care provider, except that patient data may be released to the receiving health care facility, to the department for ~~statistical public health~~ purposes, ~~or~~ upon the written authorization of the patient who is the subject of the record, or as otherwise permitted by law. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Act.

(2) Patient data received by the department shall be confidential with release only ~~(1)~~ (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual or ~~(2)~~ (b) as case-specific data to approved researchers for specific research projects. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents. Emergency-medical-service-specific data and out-of-hospital-emergency-care-provider-specific data shall be released only upon the written authorization of the service or the provider who is the subject of the record.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Sec. 12. Section 71-51,102, Revised Statutes Supplement, 2002, is amended to read:

71-51,102. (1) For purposes of this section:

(a) Automated external defibrillator means a device that:

(i) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention of an operator, whether defibrillation should be performed; and

(ii) Automatically charges and requests delivery of an electrical impulse to an individual's heart when it has identified a condition for which defibrillation should be performed;

(b) Emergency medical service means an emergency medical service as defined in section 71-5175;

(c) Health care facility means a health care facility as defined in section 71-413;

(d) Health care practitioner facility means a health care practitioner facility as defined in section 71-414; and

~~(e)~~ (e) Health care professional means any person who is licensed, certified, or registered by the Department of Health and Human Services Regulation and Licensure and who is authorized within his or her scope of practice to use an automated external defibrillator.

(2) No person other than a health care professional shall use an automated external defibrillator for emergency care or treatment unless:

(a) The user of the defibrillator has received appropriate training in the use of the defibrillator as established by the Department of Health and Human Services Regulation and Licensure; and

(b) The defibrillator is maintained and tested according to the manufacturer's guidelines.

(3) Except for the action or omission of a health care professional acting in such capacity or in a health care facility, no person who delivers emergency care or treatment using an automated external defibrillator as prescribed in subsection (2) of this section shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of rendering such care or treatment in good faith. Nothing in this subsection shall be deemed to (a) grant immunity for any willful, wanton, or grossly negligent acts of commission or omission or (b) limit the immunity provisions for certain health care professionals as provided in section 71-5194.

(4) Any person who acquires an automated external defibrillator shall notify the local emergency medical service of the existence, location,

and type of the defibrillator unless the defibrillator was acquired for use in a private residence, a health care facility, or a health care practitioner facility.

Sec. 13. Section 71-5408, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5408.~~ Sections ~~71-5401 to 71-5408~~ 71-5402 to 71-5407 and sections 13, 14, and 21 of this act shall be known and may be cited as the Nebraska Drug Product Selection Act.

Sec. 14. The purposes of the Nebraska Drug Product Selection Act are to provide for the drug product selection of equivalent drug products and to promote the greatest possible use of such products.

Sec. 15. Section 71-5402, Revised Statutes Supplement, 2002, is amended to read:

71-5402. ~~As used in~~ For purposes of the Nebraska Drug Product Selection Act, unless the context otherwise requires:

(1) Authorized transmitted copy means a paper copy of a written, signed medical order issued by a practitioner authorized to prescribe which is produced by an electronic or electromagnetic transmission or other means as authorized by rule and regulation of the department upon recommendation of the board;

(2) Bioequivalent means drug products: (a) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (b) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (c) that comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and (d) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(3) Board means the Board of Pharmacy;

(4) Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging;

(5) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;

(6) Department means the Department of Health and Human Services Regulation and Licensure;

(7) Drug product means any drug or device as defined in section 71-1,142;

(8) Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand-name drug product contained in a medical order of such practitioner;

(9) Equivalent means drug products that are both chemically equivalent and bioequivalent;

(10) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity;

(11) Medical order has the definition found in section 71-1,142;

(12) Pharmacist means a pharmacist licensed under the Uniform Licensing Law; and

(13) Practitioner has the definition found in section 71-1,142.

~~Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug and placed upon its container, label, or wrapping at the time of packaging;~~

~~(2) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names and accepted by the federal Food and Drug Administration of those drug products having exactly the same active chemical ingredients in exactly the same strength and quantity;~~

~~(3) Drug product select means to dispense, without the duly licensed prescriber's express authorization, a chemically equivalent and bioequivalent drug product in place of the drug product ordered or prescribed;~~

~~(4) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;~~

~~(5) Bioequivalent means drug products that:~~

~~(a) Are legally marketed under regulations promulgated by the federal Food and Drug Administration;~~

~~(b) Are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed;~~

(c) Comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and

(d) For which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(6) Pharmacist means a pharmacist duly licensed in accordance with the Uniform Licensing Law;

(7) Medical practitioner has the same meaning as practitioner in section 71-1,142; and

(8) Department means the Department of Health and Human Services Regulation and Licensure.

Sec. 16. Section 71-5403, Revised Statutes Supplement, 2002, is amended to read:

71-5403. (1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying in his or her own handwriting on the face of the prescription or by telephonic or electronic communication that there shall be no drug product selection. For written prescriptions, the practitioner shall specify on the prescription the phrase "no drug product selection", "dispense as written", "brand medically necessary", or "no generic substitution" or the notation "N.D.P.S.", "D.A.W.", or "B.M.N." or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note "N.D.P.S." or "No Drug Product Selection" on the face of the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select a drug product unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products. Except as limited (a) by this section, when a medical practitioner designates that no drug product selection is permitted, and (b) by subsection (1) of section 71-5404, unless the purchaser instructs otherwise, the pharmacist may drug product select a drug product with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, bioequivalent, except that products designated as controlled substances as listed in Schedule I of section 28-405 shall not be interchanged. It shall be the responsibility of the purchaser or the ultimate user to advise or instruct the pharmacist that he or she does not desire drug product selection, and it shall not be mandatory for the pharmacist to drug product select against his or her professional judgment.

(2) The department may adopt and promulgate necessary rules and regulations, upon the joint recommendation of the Board of Medicine and Surgery and the Board of Pharmacy, relating to (a) bioavailability, (b) fraudulent or misleading advertising pertaining to drug product selection, and (c) the control of conditions in which the prescribing practitioner or purchaser should be advised when drug product selection has been made by the pharmacist.

(3) A medical practitioner duly authorized to prescribe drugs, medicinal substances, or controlled substances may specify in writing or by telephonic communication on each prescription that there shall be no drug product selection for the specified brand name drug in any prescription. The phrase no drug product selection or the notation N.D.P.S. shall be specified on the prescription form or orally communicated by the medical practitioner. The pharmacist shall note N.D.P.S. on the face of the prescription if such is communicated orally by the prescribing medical practitioner.

(4) Each pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that this pharmacy may be able to select a less expensive drug product which is bioequivalent to the one prescribed by the prescriber unless the purchaser does not approve. The sign shall be provided by the department, at a cost to the pharmacy which shall not exceed the actual cost of printing to the department, and the printing on the sign shall be in block letters not less than one inch in height.

(5) A pharmacist shall not drug product select a product under the provisions of this section unless: (a) The product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit; (b) the product has been labeled with an expiration date; (c) the manufacturer, distributor, or packager provides reasonable services to accept return products that have reached their expiration date; and (d) the manufacturer, distributor, or packager maintains recall capabilities for unsafe or defective drugs.

(6)(a) Except as provided in subdivision (b) of this subsection, a pharmacist shall not drug product select a product under this section that is:

(i) An enteric-coated tablet or capsule;

(ii) An injectable suspension other than an antibiotic or insulin;

(iii) A controlled-release product;

(iv) A suppository containing active ingredients for which systemic absorption is necessary; or

(v) A different delivery system for aerosol and nebulizer drugs.

(b) A pharmacist may drug product select a product set forth in subdivision (a) of this subsection if such product has been determined by the Food and Drug Administration to be bioequivalent and therapeutically equivalent to the prescribed drug.

(7) The department shall maintain a list of drug products for which bioequivalency has been demonstrated and documented either federally or by the state.

Sec. 17. Section 71-5404, Revised Statutes Supplement, 2002, is amended to read:

71-5404. (1) A pharmacist may drug product select a drug product pursuant to subsection (1) of section 71-5403 only when there will be a savings in cost to the purchaser, except that if a pharmacy does not have in stock the prescribed drug product and the medical practitioner has not indicated N.D.P.S., and the only equivalent drug product in stock is the same or higher priced, the pharmacist, with the consent of the purchaser, may substitute the same or the higher priced drug product. Any savings resulting from drug product selection shall be reflected in the price charged the purchaser by the pharmacist.

(2) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the brand name price of the brand-name drug product and not on the basis of the generic or chemical equivalent or bioequivalent drug price equivalent drug product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(3) If the physician prescribes a drug by its generic name, the pharmacist shall, consistent with reasonable professional judgment, dispense an effective brand which is the lowest retail cost brand in stock.

(4) All prescriptions (2) A prescription drug or device when dispensed shall bear upon the label the name of the medication drug or device in the container unless the prescriber practitioner writes do not label or words of similar import on the prescription or so designates in an oral transmission of the prescription orally or by authorized transmitted copy.

(5) (3) Nothing in this section shall (a) require a pharmacy, which prices prescriptions upon a professional fee basis, to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

(6) Whenever a purchaser or patient presents a prescription that may be filled with a product selected by the pharmacist under the provisions of this section and the pharmacist chooses to make such selection, the pharmacist shall advise the purchaser or patient that he or she may indicate orally or in writing that he or she does not desire drug product selection and in that instance the prescription shall be filled as ordered. On all subsequent refills the drug product dispensed shall be distributed and manufactured by the same company as the drug product dispensed on the original prescription.

(7) When a pharmacist chooses to exercise the provisions of this section when dispensing prescriptions for patients in long-term care facilities, the pharmacist shall advise either the patient, a representative of the patient, or a staff nurse of the facility that he or she has exercised the provisions of this section, and either the patient or his or her representative or a staff nurse of the facility may indicate orally or in writing that he or she does not desire drug product selection, and in that instance the prescription shall be filled as written.

(8) Nothing contained in this section shall be construed to prohibit

any hospital licensed by the Department of Health and Human Services Regulation and Licensure from establishing rules and regulations regarding the method by which medications are prescribed and dispensed for patients of such hospitals.

Sec. 18. Section 71-5405, Revised Statutes Supplement, 2002, is amended to read:

71-5405. (1) The drug product selection of any drug product by a pharmacist pursuant to the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.

(2) Drug product selection of ~~drugs made~~ drug products by a pharmacist ~~in accordance with~~ pursuant to the act, ~~and or~~ any rules and regulations ~~that the department may adopt and promulgate~~ adopted and promulgated under the act, shall not constitute evidence of negligence if the drug product selection was made within the reasonable and prudent practice of pharmacy.

(3) When drug product selection by a pharmacist is permissible ~~in accordance with~~ under the act, such drug product selection shall not constitute evidence of negligence on the part of the prescribing medical practitioner. ~~In order to promote drug product selection to the fullest extent, the~~ The failure of a prescribing medical practitioner to provide that there shall be no drug product selection in any case shall not constitute evidence of negligence or malpractice on the part of such prescribing medical practitioner.

Sec. 19. Section 71-5406, Revised Statutes Supplement, 2002, is amended to read:

71-5406. The manufacturer, packager, or distributor of any ~~human use~~ legend drug sold, delivered, or offered for sale ~~for human use in the State of Nebraska after January 1, 1978,~~ shall have the name and address of the manufacturer of the finished dosage form of the drug printed on the label on the immediate container of the drug the name and address of the manufacturer of the finished dosage form of the container of such drug. Whenever a duly authorized agent of the department ~~finds or~~ has probable cause to believe that any drug is without such labeling, the agent shall embargo such drug and shall affix thereto an appropriate marking, giving thereto. Such marking shall contain: (1) Adequate notice that the drug (a) is or is suspected of being sold, delivered, or offered for ~~gain~~ sale in violation of the Nebraska Drug Product Selection Act and (b) has been embargoed; and (2) a ~~r~~ ~~and~~ warning that it is unlawful for any person to remove or dispose of the embargoed drug by sale or otherwise without the permission from of the agent or a court of competent jurisdiction.

Sec. 20. Section 71-5407, Revised Statutes Supplement, 2002, is amended to read:

71-5407. (1) In addition to any other penalties provided by law, any person who violates ~~the provisions~~ any provision of the Nebraska Drug Product Selection Act or any rule or regulation adopted and promulgated under ~~such act shall, upon conviction thereof,~~ be the act is guilty of a Class IV misdemeanor for each violation.

(2) It ~~shall be~~ is unlawful for any employer or such an employer's agent to coerce a pharmacist to dispense a ~~prescription drug or device~~ drug product against the professional judgment of the pharmacist or as ordered by ~~the prescribing medical~~ a prescribing practitioner.

Sec. 21. The department may adopt and promulgate rules and regulations necessary to implement the Nebraska Drug Product Selection Act upon the joint recommendation of the Board of Medicine and Surgery and the Board of Pharmacy.

Sec. 22. Within the limits specified in this section, the State of Nebraska opts out of the provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, section 115, that eliminates eligibility for food stamps for any person convicted of a felony involving the possession, use, or distribution of a controlled substance. A person shall be ineligible for food stamp benefits under this section if he or she (1) has had three or more convictions for the possession or use of a controlled substance or (2) has been convicted of a felony involving the sale or distribution of a controlled substance under section 28-416. A person shall only be eligible to receive food stamp benefits under this section if he or she is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the date of conviction. The determination of such participation or completion shall be made by the treatment provider administering the program.

Sec. 23. Section 81-6,107, Revised Statutes Supplement, 2002, is amended to read:

81-6,107. ~~(1)~~ Any physician or pharmacist required to make reports



under section 81-6,102 or 81-6,103 is immune from liability, civil, criminal, or otherwise, for filing an incomplete report as a result of the failure of an individual to provide the information necessary to make such report.

~~(2) Any physician or pharmacist who fails to file reports as required under section 81-6,102 or 81-6,103 shall be guilty of a Class V misdemeanor for each offense.~~

Sec. 24. Section 81-6,110, Revised Statutes Supplement, 2002, is amended to read:

81-6,110. Costs associated with administration of the Parkinson's Disease Registry Act shall be paid from cash funds, contract receipts, gifts, and grants. No general funds shall be used to pay such costs. Funds received by the department for the payment of such costs shall be remitted to the State Treasurer for credit to the Department of Health and Human Services Regulation and Licensure Cash Fund. Notwithstanding any other provision of the act, the Parkinson's Disease Registry and all duties related to the administration of such registry and such act shall cease as of June 30 of any year in which the department has insufficient funds on hand to perform its duties under the act for the next fiscal year, after providing thirty days' written notice to each approved researcher who has contracted with the department under section 81-6,101 in the current biennium. The Parkinson's Disease Registry Act terminates on June 30, 2003, or if no requests are received for two years from approved researchers to obtain access to data contained in the Parkinson's Disease Registry, the act terminates two years after the date of the last request, whichever occurs sooner, unless reenacted or reestablished by the Legislature.

Sec. 25. Original sections 20-127, 20-129, 71-2406, and 71-5408, Reissue Revised Statutes of Nebraska, and sections 71-140, 71-1,148, 71-1,235, 71-514.02, 71-2407, 71-2408, 71-2409, 71-5185, 71-51,102, 71-5402 to 71-5407, 81-6,107, and 81-6,110, Revised Statutes Supplement, 2002, are repealed.

Sec. 26. The following sections are outright repealed: Section 71-5401, Reissue Revised Statutes of Nebraska, and sections 79-11,142 to 79-11,149 and 81-6,108, Revised Statutes Supplement, 2002.