[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 31

STATE OF NEW JERSEY

ADOPTED JUNE 24, 1996

Sponsored by Assemblywoman MURPHY

AN ACT requiring the use of uniform prescription blanks, amending R.S.45:14-14, N.J.S.2C:20-2 and N.J.S.2C:21-1 and supplementing chapter 14 of Title 45 of the Revised Statutes.

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

1. (New Section) The Legislature finds and declares that the welfare of the citizens of this State and the financial integrity of the governmental reimbursement programs administered for their benefit are threatened by the growing problem of prescription drug abuse, particularly the widespread trafficking in forged and altered prescriptions for oral drugs and items; the submission of these forged prescriptions for payment by State and federal funds through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled, and general assistance programs and by private health insurers drive the cost of health care up for all citizens of New Jersey; and to reduce the ease with which such forgeries can be accomplished and to deter drug abuse, the implementation of a program by which prescriptions shall be [1]<u>written</u>[1] on a uniform prescription blank, printed on non-reproducible, non-erasable safety paper,[1]**[**issued in a serialized, bound fashion,**]**[1] subject to stringent security controls[1]<u>,</u>[1] is required.

The Legislature further finds and declares that it is likely that prior authorization programs to control fraud and abuse may become unnecessary upon the passage and implementation of P.L. , c..... (C.....)(now pending before the Legislature as this bill).

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Senate floor amendments adopted July 25, 1996.

2. (New Section) a. Beginning [1][on] 180 days after[1] the effective date of P.L...., c. (C.....)(now pending before the Legislature as this bill) [1][and thereafter][1], a licensed prescriber shall use [1][serialized,][1] non-reproducible, non-erasable [1]safety paper [1]New Jersey Prescription Blanks bearing that prescriber's license number whenever the prescriber issues prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items. The prescription blanks shall be secured from a vendor approved by the Division of Consumer Affairs in the Department of Law and Public Safety.

[1]Notwithstanding the provisions of this subsection to the contrary, the Director of the Division of Consumer Affairs may temporarily suspend the operative date of this subsection if the director finds that an insufficient number of licensed prescribers have obtained the required prescription blanks by the operative date with the result that persons seeking to have prescriptions filled would be substantially inconvenienced. The director shall promptly notify the licensed prescribers of the new operative date of this subsection.[1]

b. A licensed prescriber shall maintain a record of the receipt of New Jersey Prescription Blanks. The prescriber shall notify the Office of Drug Control in the Division of Consumer Affairs as soon as possible but no later than 72 hours of being made aware that any New Jersey Prescription Blank in the prescriber's possession has been stolen. [1]Upon receipt of notification, the Office of Drug Control shall take appropriate action, including notification to the Department of Human Services and the Attorney General.[1]

3. (New Section) a. Beginning [1][on]180 days after[1] the effective date of P.L....., c.....(C.....)(now pending before the Legislature as this bill) [1][and thereafter][1], prescriptions issued by a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall be written on [1][serialized,][1] non-reproducible, non-erasable [1]safety paper[1] New Jersey Prescription Blanks. The prescription blanks shall be secured from a vendor approved by the Division of Consumer Affairs in the Department of Law and Public Safety. The New Jersey Prescription Blanks shall bear the unique provider number assigned to that health care facility for the issuing of prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items.

[1]Notwithstanding the provisions of this subsection to the contrary, the Director of the Division of Consumer Affairs may temporarily suspend the operative date of this subsection if the director finds that an insufficient number of licensed health care facilities have obtained the required prescription blanks by the operative date with the result that persons seeking to have prescriptions filled would be substantially

inconvenienced. The director shall promptly notify the licensed health care facilities of the new operative date of this subsection.[1]

b. A health care facility shall maintain a record of the receipt of New Jersey Prescription Blanks. The health care facility shall notify the Office of Drug Control in the Division of Consumer Affairs as soon as possible but no later than 72 hours of being made aware that any New Jersey Prescription Blank in the facility's possession has been stolen. [1] Upon receipt of notification, the Office of Drug Control shall take appropriate action, including notification to the Department of Human Services and the Attorney General.[1]

4. (New Section) a. Beginning [1][on]180 days after[1] the effective date of P.L....., c.....(C.....)(now pending before the Legislature as this bill), a prescription issued by a licensed prescriber or health care facility shall not be filled by a pharmacist unless the prescription is issued on a New Jersey Prescription Blank bearing the prescriber's license number or the unique provider number assigned to a health care facility, as required pursuant to section 2 or 3 of P.L....., c.....(C.....)(now pending before the Legislature as this bill).

[1]Notwithstanding the provisions of this subsection to the contrary, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety may temporarily suspend the operative date of this subsection if the director finds that an insufficient number of licensed prescribers or licensed health care facilities have obtained the required prescription blanks by the operative date with the result that persons seeking to have prescriptions filled would be substantially inconvenienced. The director shall notify licensed pharmacists of the new operative date of this subsection.[1]

b. Notwithstanding the provisions of subsection a. of this section [1]to the contrary[1], for the 90 days following the [1][effective date of P.L...., c.... (C....)(now pending before the Legislature as this bill)] 180-day period or such other operative date as may be determined by the Director of the Division of Consumer Affairs pursuant to subsection a. of this section[1], a pharmacist, prior to filling a prescription, shall request verification, in writing or orally, of the prescription from the prescriber or health care facility if the pharmacist receives a prescription that is not issued on a New Jersey Prescription Blank as required by section 2 or 3 of P.L....., c.....(C.....)(now pending before the Legislature as this bill).

5. (New Section) Nothing contained in P.L....., c..... (C.....)(now pending before the Legislature as this bill) shall preclude a licensed prescriber from transmitting to a pharmacist by telephone or electronic means a prescription, as otherwise authorized by law, if that prescriber provides the prescriber's Drug Enforcement

Administration registration number or prescriber's license number, as appropriate, to the pharmacist at the time the prescriber transmits the prescription.

6. a. (New Section) The Division of Consumer Affairs in the Department of Law and Public Safety shall [1][approve] establish[1] the format for uniform, [1][serialized,][1] non-reproducible, non-erasable [1]safety paper[1] prescription blanks, to be known as New Jersey Prescription Blanks[1], which format shall include an identifiable logo or symbol that will appear on all prescription blanks. The division shall establish the format and solict vendors within 10 days after the effective date of P.L. , c. (pending before the Legislature as this bill)[1]. The division shall[1], within 45 days of the effective date of P.L. , c. (pending before the Legislature as this bill),[1] approve [1][vendors to produce the] a sufficient number of vendors to ensure production of an adequate supply of [1] New Jersey Prescription Blanks [1][required to be used by] for[1] licensed [1][prescriber] prescribers[1] and health care facilities [1][pursuant to sections 2 and 3 of P.L....., c.....(C.....)(now pending before the Legislature as this bill)] Statewide[1]. [1][The division shall approve more than one vendor to produce New Jersey Prescription Blanks.][1]

b. The Division of Consumer Affairs shall mail to all licensed prescribers in this State designated under R.S.45:14-14 to write prescriptions[1], to all licensed pharmacists[1] and to all licensed health care facilities a notice of the requirements of P.L....., c.....(C.....)(now pending before the Legislature as this bill) and the names and addresses of the vendors approved to produce New Jersey Prescription Blanks. The notice shall be mailed 30 days prior to the [1][effective] operative[1] date of [1]sections 2, 3 and 4 of[1] P.L....., c. .....(C.....)(now pending before the Legislature as this bill).

7. (New Section) a. No later than May 1, 1997, the Department of Human Services, in conjunction with the Department of Health, shall submit a written report to the Legislature and the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or their successors, documenting the costs and savings directly attributable to prior authorization programs in order to determine whether prior authorization programs are both cost effective and not duplicative of other programs in reducing fraud and abuse related to prescription drugs.

b. No later than February 1, 1998, the Department of Human Services, in conjunction with the Department of Health, shall submit a report to the Legislature and the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or their

successors, detailing the impact of P.L....., c.....(C.....)(now pending before the Legislature as this bill).

8. R.S.45:14-14 is amended to read as follows:

45:14-14. The term "prescription" as used in R.S.45:14-13, and R.S.45:14-15 to R.S.45:14-17 means an order for drugs or medicines or combinations or mixtures thereof, written or signed by a duly licensed physician, dentist, optometrist, veterinarian, other medical practitioner, a certified nurse midwife, a nurse practitioner/clinical nurse specialist or a physician assistant, licensed or approved to write prescriptions intended for the treatment or prevention of disease in man or animals, and includes orders for drugs or medicines or combinations or mixtures thereof <u>, on a New Jersey Prescription Blank obtained from a vendor approved by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to section 6 of P.L....., c.....(C.....)(now pending before the Legislature as this bill),</u> transmitted to pharmacists through word of mouth, telephone, telegraph or other means of communication by a duly licensed physician, dentist, optometrist, veterinarian, other medical practitioner, a certified nurse midwife, a nurse practitioner/clinical nurse specialist or a physician assistant, licensed or approved to write prescriptions intended for the treatment or prevention of disease in man or animals, and such prescriptions received by word of mouth, telephone, telegraph or other means of communication shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be filed by the pharmacist as provided for in R.S.45:14-15, but no prescription, for any narcotic drug, except as provided in section 15 of P.L.1970, c.226 (C.24:21-15), shall be given or transmitted to pharmacists, in any other manner, than in writing signed by the physician, dentist, veterinarian, other medical practitioner, certified nurse midwife, nurse practitioner/clinical nurse specialist or a physician assistant, giving or transmitting the same, nor shall such prescription be renewed or refilled.

(cf: P.L.1991, c.385, s.4)

9. N.J.S.2C:20-2 is amended to read as follows:

2C:20-2. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally. a. Consolidation of Theft Offenses. Conduct denominated theft in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of

the court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. Grading of theft offenses.

(1) Theft constitutes a crime of the second degree if:

(a) The amount involved is $75,000.00 or more;

(b) The property is taken by extortion;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram; or

(d) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is $75,000 or more.

(2) Theft constitutes a crime of the third degree if:

(a) The amount involved exceeds $500.00 but is less than $75,000.00;

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse or airplane;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the amount involved is less than $75,000.00 or is undetermined and the quantity is one kilogram or less;

(d) It is from the person of the victim;

(e) It is in breach of an obligation by a person in his capacity as a fiduciary;

(f) It is by threat not amounting to extortion;

(g) It is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant;

(h) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is less than $75,000; **[**or**]**

(i) The property stolen is any real or personal property related to, necessary for, or derived from research, regardless of value, including, but not limited to, any sample, specimens and components thereof, research subject, including any warm-blooded or cold-blooded animals being used for research or intended for use in research, supplies, records, data or test results, prototypes or equipment, as well as any proprietary information or other type of information related to research ; or

(j) The property stolen is a New Jersey Prescription Blank as referred to in R.S.45:14-14.

(3) Theft constitutes a crime of the fourth degree if the amount

involved is at least $200.00 but does not exceed $500.00. If the amount involved was less than $200.00 the offense constitutes a disorderly persons offense.

(4) The amount involved in a theft shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

c. Claim of right. It is an affirmative defense to prosecution for theft that the actor:

(1) Was unaware that the property or service was that of another;

(2) Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(3) Took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

d. Theft from spouse. It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

(cf: P.L. 1995, c.20, s.5)

10. N.J.S.2C:21-1 is amended to read as follows:

2C:21-1. a. Forgery. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(1) Alters or changes any writing of another without his authorization;

(2) Makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(3) Utters any writing which he knows to be forged in a manner specified in paragraph (1) or (2).

"Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

b. Grading of forgery. Forgery is a crime of the third degree if

the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments, certificates or licenses issued by the government, New Jersey Prescription Blanks as referred to in R.S.45:14-14, or part of an issue of stock, bonds or other instruments representing interest in or claims against any property or enterprise.

Otherwise forgery is a crime of the fourth degree.

c. Possession of forgery devices. A person is guilty of possession of forgery devices, a crime of the third degree, when with purpose to use, or to aid or permit another to use the same for purposes of forging written instruments, he makes or possesses any device, apparatus, equipment or article specially designed or adapted to such use.

(cf: P.L.1981, c.290, s.20)

11. This act shall take effect [1]**[**180 days after enactment, except that section 6 shall take effect**]**[1] immediately.

Requires use of uniform New Jersey Prescription Blanks for all prescriptions written in State.