

August 23, 2019

**SENATE BILL NO. 834**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 834 with my recommendations for reconsideration.

Senate Bill No. 834 purports to prohibit the resale of non-prescription diabetes test strips. Currently, pharmacies and similar retail establishments are legally permitted to resell blood glucose test strips without any obligation to inform the customer that the product was not obtained from an authorized manufacturer or had previously been sold and repackaged. These strips, essential for diabetics who need to exercise control over their disease through daily blood glucose level tests, are often untenably expensive and represent a disproportionate amount of the overall cost of care for uninsured and underinsured individuals.

This problem has been further exacerbated by a loophole in federal law that allows retailers and suppliers to bill patients for the resold goods at a profit. The Food and Drug Administration, while recognizing that resale is currently legal under federal law, has cautioned consumers against using pre-owned strips that may have expired or been improperly stored because of the potential for inaccurate test results. Precise results from self-administered glucose tests can mean the difference between life and death for those with diabetes.

While I support the goal of protecting New Jerseyans from a practice that puts profits over people's well-being, and applaud the bill's sponsors for highlighting this issue and seeking to curb retailers from billing insurers for these resold strips, I firmly believe that additional safeguards are necessary to achieve that worthy objective. Thus, I am recommending that the bill be amended to prohibit the sale of unauthorized or previously sold

goods without notice to the consumer regarding the origin and current condition of the strips. I am hopeful that by requiring greater transparency in sales transactions, we will enable New Jersey patients to be better-equipped to make informed decisions about their care.

Directly addressing this practice at the point of sale will better protect consumers who might otherwise overlook authorized manufacturer information posted on the Board of Pharmacy's (the "Board") website. The recommended amendments also reflect the reality that the Board does not have the appropriate resources to embargo devices that are improperly sold at these establishments, and therefore would be unable to effectively carry out that function as described in the bill.

Therefore, I herewith return Senate Bill No. 834 and recommend that it be amended as follows:

<u>Page 2, Section 2, Line 16:</u>	After "2." insert "a."
<u>Page 2, Section 2, Line 18:</u>	Delete "and shall" and insert "."
<u>Page 2, Section 2, Lines 19-22:</u>	Delete in their entirety
<u>Page 2, Section 2, Line 23:</u>	Delete "devices on the board's Internet Web site."
<u>Page 2, Section 2, Line 26:</u>	Delete "and inform the board of" and insert "to reflect any"
<u>Page 2, Section 2, Lines 27-30:</u>	Delete in their entirety
<u>Page 2, Section 2, Line 31:</u>	Insert "b. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any retail mercantile establishment to sell or offer to sell to a consumer in New Jersey a non-prescription diabetes test device that was not acquired directly from the manufacturer or from one of the manufacturer's authorized distributors, unless the device is plainly marked by a stamp, tag, label or sign that is either affixed to the device or located at the point of sale disclosing that the device was not acquired directly from the

manufacturer or from an authorized distributor of the manufacturer.

c. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any retail mercantile establishment to sell or offer to sell to a consumer in New Jersey a non-prescription diabetes test device that was previously sold and repackaged, unless the device is plainly marked by a stamp, tag, label or sign that is either affixed to the device or located at the point of sale disclosing that the device was previously sold and re-packaged.

d. For purposes of this section, a "retail mercantile establishment" means any place of business where merchandise is exposed or offered for sale at retail to members of the public. This term shall include entities that use the Internet or other electronic means to expose or offer merchandise for sale at retail to consumers in New Jersey."

<u>Page 2, Section 4, Lines 42-48:</u>	Delete in their entirety
<u>Page 3, Section 4, Lines 1-4:</u>	Delete in their entirety
<u>Page 3, Section 5, Line 6:</u>	Delete "5." and insert "4."
<u>Page 3, Section 5, Line 6:</u>	Delete "who submits a reimbursement claim for" and insert "sells, offers for sale, or otherwise dispenses to the public"
<u>Page 3, Section 5, Line 7:</u>	Delete "to a health insurance carrier,"
<u>Page 3, Section 5, Line 8:</u>	Delete in its entirety
<u>Page 3, Section 5, Line 9:</u>	Delete "payer when" and insert "that"
<u>Page 3, Section 5, Line 9:</u>	Delete "knew" and insert "knows"
<u>Page 3, Section 5, Line 10:</u>	Delete "that the pharmacy did not purchase the diabetes test device" and insert "was not acquired by the pharmacy"
<u>Page 3, Section 5, Lines 12-13:</u>	Delete "identified pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill)"

Page 3, Section 6, Line 17:

Delete "6." and insert "5."

Page 3, Section 7, Line 22:

Delete "7." and insert "6."

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor