HOUSE BILL 566

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Donald E. Bratton

AN ACT

RELATING TO HEALTH; REQUIRING AUTHORIZATION BY AN ATTENDING PHYSICIAN FOR DISPENSING OF A GENERIC DRUG PRESCRIPTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 26-3-1 NMSA 1978 (being Laws 1976, Chapter 60, Section 2) is amended to read:

"26-3-1. SHORT TITLE.--[~~Sections 54-6-28.1 through 54-6-28.3 NMSA 1953~~] Chapter 26, Article 3 NMSA 1978 may be cited as the "Drug Product Selection Act"."

Section 2. Section 26-3-3 NMSA 1978 (being Laws 1976, Chapter 60, Section 4, as amended) is amended to read:

"26-3-3. DRUG PRODUCT SELECTION PERMITTED--CONDITIONS--EXCEPTION FOR PROHIBITION--LABELING.--

A. Upon receipt of a prescription written by a licensed practitioner who may prescribe drugs for a drug for

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which one or more multiple-source drugs are recognized, listed as final determinations and published in the federal register by the federal department of health and human services, a pharmacist may dispense any one of the drugs that satisfies the final determinations so recognized and listed by the federal department of health and human services and is sold at a lower cost than the drug listed in the prescription, as long as the pharmacist first personally receives authorization from the attending physician for the substitution.

B. Upon receipt of a prescription written by a licensed practitioner for a drug that appears on the federal food and drug administration's approved prescription drug products with therapeutic equivalence evaluation list as supplemented, a pharmacist may dispense any of the therapeutically equivalent drugs that appears on that list and [~~which~~] that is lower in cost than the drug listed in the prescription, as long as the pharmacist first personally receives authorization from the attending physician for the substitution.

C. Drug product selection shall be permitted only under circumstances and conditions set forth in Subsections A and B of this section unless the licensed practitioner prescribing prohibits drug product selection. A licensed practitioner shall prohibit drug product selection by [~~writing with his hand~~] hand-writing the words "no substitution" or the

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diminution "no sub" on the face of a prescription. An attending physician may elect to prohibit substitution by withholding authorization for the substitution when contacted by the pharmacist.

D. If drug product selection occurs as permitted in Subsections A and B of this section, the pharmacist shall indicate on the label of the dispensed container the brand of drug prescribed and the name of the drug dispensed.

E. A pharmacist may not select a therapeutically equivalent drug unless [~~he~~] the pharmacist passes on to the patient all savings between the net cost of the product prescribed and the product dispensed and has received authorization for the substitution as set forth in Subsections A and B of this Section.

F. For the purposes of this section, "attending physician" means the licensed practitioner who works directly with the patient.

[~~F.~~] G. For purposes of this section, "multiple-source drug" means a drug marketed or sold by two or more manufacturers, formulators or labelers.

[~~G.~~] H. For purposes of this section, "therapeutically equivalent" means drug products [~~which~~] that have the same amount of the active drug in the same dosage form [~~which~~] that when administered can be expected to provide the same therapeutic effect."

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