REQUIRES TWO-THIRDS MAJORITY VOTE (§ 4)

S.B. 387

SENATE BILL NO. 387–SENATOR TITUS

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to drugs and prescriptions. (BDR 54-656)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to drugs; revising provisions relating to the substitution of generic drugs for drugs prescribed by brand name; requiring a manufacturer of drugs to report to the State Board of Pharmacy any gifts or other economic benefits provided by the manufacturer to certain practitioners and administrators of health care facilities and plans; providing civil penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 639.2583 is hereby amended to read as follows:

639.2583 [~~If~~]

1. Except as otherwise provided in this section, if a practitioner has prescribed a drug by brand name and ***the practitioner*** has not indicated ***in handwriting on the form used for the prescription or by oral communication*** that a substitution is prohibited, [~~a pharmacist:~~

~~1. Shall, in a case where he is being paid for the drug by a governmental agency; and~~

~~2. May, in any other case, fill~~] ***the pharmacist who fills or refills*** the prescription [~~with~~] ***shall dispense, in substitution,*** another drug which is available to him [~~, is~~] ***if the other drug:***

(a) Is less expensive than the drug prescribed ~~[, is]~~ ***by brand name;***

(b) Is biologically equivalent ~~[, has]~~ ***to the drug prescribed by brand name;***

(c) Has the same active ingredient or ingredients of the same strength, quantity and form of dosage ***as the drug prescribed by brand name;*** and ~~[is]~~

(d) Is of the same generic type as the drug prescribed ~~[. The pharmacist may also make such a substitution if the prescription was written]~~ ***by brand name.***

2. If the pharmacist has available to him more than one drug that may be substituted for the drug prescribed by brand name, the pharmacist shall dispense, in substitution, the least expensive of the drugs that are available to him for substitution.

3. Before a pharmacist dispenses a drug in substitution for a drug prescribed by brand name, the pharmacist shall:

(a) Advise the person who presents the prescription that the pharmacist intends to dispense a drug in substitution;

(b) Advise the person of the name of the drug that the pharmacist intends to dispense in substitution and the price difference between the drug prescribed by brand name and the drug that the pharmacist intends to dispense in substitution; and

(c) Advise the person that he may refuse to accept the drug that the pharmacist intends to dispense in substitution, unless the pharmacist is being paid for the drug by a governmental agency.

4. If a person refuses to accept the drug that the pharmacist intends to dispense in substitution, the pharmacist shall dispense the drug prescribed by brand name, unless the pharmacist is being paid for the drug by a governmental agency, in which case the pharmacist shall dispense the drug in substitution.

5. A pharmacist shall disregard the words "dispense only as written" or the abbreviation "D.A.W." or any words or abbreviations with a similar import or meaning which are placed on the form used for a prescription and shall dispense a drug in substitution for a drug prescribed by brand name in the manner set forth in this section, if such words or abbreviations are placed on the form used for the prescription by preprinting or other mechanical process or by any method other than handwriting.

6. A pharmacist shall not dispense a drug in substitution for a drug prescribed by brand name, unless the drug that the pharmacist dispenses in substitution is less expensive than the drug prescribed by brand name.

7. The provisions of this section apply to a prescription issued to a person by a practitioner from outside this state ~~[and indicates]~~ ***if the practitioner has not indicated in handwriting on the form used***

for the prescription or by oral communication that a substitution ~~[may be made.]~~ ***is prohibited.***

8. The provisions of this section do not apply to a prescription issued to a person if a substitution:

(a) Would violate the terms of a health care plan that maintains a mandatory, exclusive or closed formulary for its coverage for prescription drugs; or

(b) Would otherwise make the transaction ineligible for reimbursement by a third party.

Sec. 2. NRS 639.2589 is hereby amended to read as follows:

639.2589 1. The form ***used*** for any prescription which is issued or intended to be filled in this state must contain a line for the signature of the ~~[prescriber, the printed words "dispense only as written" and a box near that statement for the purpose of indicating that a substitution may not be made.]~~ ***practitioner.***

2. Substitutions may be made in filling prescriptions contained in the orders of a physician, or of an advanced practitioner of nursing who is a practitioner, in a facility for skilled nursing or facility for intermediate care. ~~[Each page of the document which contains the order must be printed with the words: "The biological equivalent of drugs ordered may be dispensed unless initialed by the prescriber here" and a box must be provided near that statement for the purpose of indicating that a substitution may not be made.]~~

3. Substitutions may be made in filling prescriptions ordered on a patient's chart in a hospital if the hospital's medical staff has approved a formulary for specific generic substitutions.

Sec. 3. NRS 639.259 is hereby amended to read as follows:

639.259 No employer of a pharmacist may require the pharmacist to dispense any specific generic drug ***in substitution for another drug*** if ~~[:]~~ ***the:***

1. Substitution is not permitted by the prescription as signed by a practitioner; ~~[or]~~

2. Substitution would be against the professional judgment of the pharmacist ~~[.]~~ ***; or***

3. Substitution would violate any provision of NRS 639.2583 to 639.2599, inclusive.

Sec. 4. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Beginning with calendar year 2004, on or before December 31 of each year, a manufacturer of drugs shall file a report with the Board disclosing the value, nature and purpose of any gift, fee, payment, subsidy or other economic benefit that the manufacturer provided, directly or indirectly, to a practitioner who is located within this state or an administrator of a health care facility or plan that conducts business within this state.

2. The report must be:

(a) For the period beginning on July 1 of the previous calendar year and ending on June 30 of the year in which the report is filed; and

(b) Made on a form and in a manner prescribed by the Board.

3. In each report to the Board, the manufacturer shall identify any information in the report that is a trade secret. Any information that the manufacturer identifies as a trade secret is confidential and must not be disclosed by the Board.

4. If a manufacturer of drugs fails to file a report pursuant to this section or knowingly and willfully fails to disclose, in such a report, any information that must be disclosed pursuant to this section, the manufacturer is liable for a civil penalty of not more than $10,000 for each such violation. The Attorney General may recover the civil penalty by bringing a civil action, in the name of the State of Nevada, against the manufacturer. If the court finds that the manufacturer is liable for the civil penalty, the court shall order the manufacturer to pay:

(a) Court costs; and

(b) Reasonable costs of the investigation and the prosecution of the civil action by the Attorney General, including, without limitation, attorney's fees.

5. As used in this section:

(a) "Administrator of a health care facility or plan" means a person who is authorized to direct, control or supervise the policies or practices of an entity providing health care or an entity operating or administering any type of facility, program or plan relating to the provision of health care, including, without limitation, a third-party administrator.

(b) "Trade secret" has the meaning ascribed to it in NRS 600A.030.

Sec. 5. NRS 639.2585 is hereby repealed.

TEXT OF REPEALED SECTION

639.2585 Pharmacist to advise person presenting prescription; exception; substitution prohibited if cost of generic drug is higher.

1. Except where a substitution is required by subsection 1 of NRS 639.2583:

(a) Before he makes a substitution, a pharmacist shall advise the person who presents the prescription of:

(1) The generic drug which he proposes to substitute; and

(2) The price difference between the drug under the brand name prescribed and the drug which he proposes to substitute.

(b) The person presenting the prescription may refuse to accept the proposed substitution.

2. A pharmacist shall not make any substitution of drugs if the drug to be substituted is higher in cost than the drug prescribed by brand name.

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