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; requiring the Board of Medical Examiners and the State Board of Pharmacy to post on the Internet certain information relating to manufacturers of drugs; revising provisions relating to the substitution of generic drugs for drugs prescribed by brand name; 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. Chapter 630 of NRS is hereby amended by adding thereto a new section to read as follows:

The Board shall post on a website or other Internet site that is operated or administered by or on behalf of the Board:

1. A general description of the basic elements of the Compliance Program Guidance for Pharmaceutical Manufacturers that is published by the Office of Inspector General of the United States Department of Health and Human Services, or links to websites or other Internet sites that are operated or administered by or on behalf of the Office of Inspector General where such information may be obtained;

2. A general description of the process for reporting unlawful or unethical conduct by pharmaceutical manufacturers to the Office of Inspector General, or links to websites or other Internet sites that are operated or administered by or on behalf of the

Office of Inspector General where such information may be obtained; and

3. A current telephone number for the Office of Inspector General.

Sec. 2. Chapter 639 of NRS is hereby amended by adding thereto a new section to read as follows:

The Board shall post on a website or other Internet site that is operated or administered by or on behalf of the Board:

1. A general description of the basic elements of the Compliance Program Guidance for Pharmaceutical Manufacturers that is published by the Office of Inspector General of the United States Department of Health and Human Services, or links to websites or other Internet sites that are operated or administered by or on behalf of the Office of Inspector General where such information may be obtained;

2. A general description of the process for reporting unlawful or unethical conduct by pharmaceutical manufacturers to the Office of Inspector General, or links to websites or other Internet sites that are operated or administered by or on behalf of the Office of Inspector General where such information may be obtained; and

3. A current telephone number for the Office of Inspector General.

Sec. 3. 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 ***, by a method set forth in subsection 5,*** 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; and

(b) 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 not dispense a drug in substitution for a drug prescribed by brand name if the practitioner has indicated that a substitution is prohibited using one or more of the following methods:

(a) By oral communication to the pharmacist at any time before the drug is dispensed.

(b) By handwriting the words "Dispense as Written" on the form used for the prescription, including, without limitation, any form used for transmitting the prescription from a facsimile machine to another facsimile machine. The pharmacist shall disregard the words "Dispense as Written" if they have been placed on the form used for the prescription by preprinting or other mechanical process or by any method other than handwriting.

(c) By including the words "Dispense as Written" in any prescription that is given to the pharmacist by electronic transmission pursuant to the regulations of the Board, including, without limitation, an electronic transmission from a computer equipped with a facsimile modem to a facsimile machine or from a computer to another computer pursuant to the regulations of the Board.

6. The provisions of this section also apply to a prescription issued to a person by a practitioner from outside this state ~~[and indicates]~~ ***if the practitioner has not indicated, by a method set forth in subsection 5,*** that a substitution ~~[may be made.]~~ ***is prohibited.***

7. The provisions of this section do not apply to:

(a) A prescription drug that is dispensed to any inpatient of a hospital by an inpatient pharmacy which is associated with that hospital;

(b) A prescription drug that is dispensed to any person by mail order or other common carrier by an Internet pharmacy which is certified by the Board pursuant to NRS 639.23288 and authorized to provide service by mail order or other common carrier pursuant to the provisions of this chapter; or

(c) A prescription drug that is dispensed to any person by a pharmacist if the substitution:

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

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

Sec. 4. 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. 5. 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. 6. 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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