



Megan Byrnett

Bill Analysis
Legislative Service Commission

H.B. 595

126th General Assembly
(As Introduced)

Reps. Schneider, Peterson, Fessler, DeGeeter, Allen, J. McGregor, Yuko, Combs, Brinkman, Fende, Setzer, S. Smith, Uecker, Reidelbach, Ujvagi, Skindell, Chandler, Hughes, Cassell

BILL SUMMARY

- Prohibits a pharmacist from substituting a different brand name drug or generically equivalent drug for a prescribed drug intended to treat epilepsy without written consent from the patient or patient's agent.
- Defines "patient's agent" and permits a patient's agent to instruct a pharmacist not to dispense a generically equivalent drug on behalf of the patient.
- Requires a pharmacist, or the pharmacist's agent, assistant, or employee, to inform a patient or the patient's agent of both of the following if a prescription is for an epilepsy drug and the State of Ohio is billed for the drug: (a) whether a generically equivalent drug is available at a lower or equal cost, and (b) the right to refuse the generic selected.
- Specifies that failure to comply with the above requirements is a minor misdemeanor.

CONTENT AND OPERATION

Substitution of generic for brand name drugs intended to treat epilepsy

When substitution is allowed

(R.C. 4729.38(A) and (B) (current law); 4729.38(A), (B), and (C) (the bill))

Current law. Current law permits a pharmacist filling a prescription for a brand name drug, including a drug intended to treat epilepsy, to select a generically equivalent drug if all of the following applies:

(1) The patient has not otherwise instructed the pharmacist not to dispense a generically equivalent drug;

(2) On a written prescription, the prescriber has not handwritten, "dispense as written," or "D.A.W.," or, when ordering a prescription electronically or orally, the prescriber has not specified that the brand name drug is medically necessary;

(3) The price of the generically equivalent drug to the patient is not less than or equal to the price of the brand name drug.

The bill. With respect to prescriptions for drugs intended to treat epilepsy, the bill prohibits a pharmacist from substituting another brand name drug or a generically equivalent drug unless the pharmacist does both of the following:

(1) Obtains written certification from the patient or the patient's agent that the patient or the agent is aware that the drug is different from the prescribed drug;

(2) Obtains written consent from the patient or patient's agent to the selection of the different drug.

With respect to *all* prescriptions (not just those intended to treat epilepsy), the bill permits a patient's agent (not only the patient) to instruct a pharmacist not to dispense a generically equivalent drug. The bill defines "patient's agent" as a person a patient has authorized to act on the patient's behalf regarding a prescription. The definition excludes health insuring corporations (HICs) and sickness and accident insurers authorized to do business in Ohio.

Duty to inform patient

(R.C. 4729.38(A)(3) (current law); 4729.38(B)(3) (the bill))

Current law. Current law, in general, requires a pharmacist, or the pharmacist's agent, assistant, or employee, to inform the patient or the patient's agent if a generically equivalent drug is available at a lower or equal cost and of the right to refuse the generically equivalent drug selected. Excepted from this requirement are prescriptions billed to any State of Ohio agency, division, or department that reimburses the pharmacy, and prescriptions for patients of a hospital, nursing home, or similar patient care facility.

The bill. The bill specifies that the exception to the "duty to inform" requirement applicable to drugs billed to State of Ohio entities does not apply if the prescription is for epilepsy. Thus, under the bill, if the State is billed for a patient's prescriptions, a pharmacist, or the pharmacist's agent, assistant, or employee, must inform the patient or the patient's agent if a generically equivalent

drug is available at a lower or equal cost and of the right to refuse the drug selected if the prescription is for epilepsy.

Criminal penalties

(R.C. 4729.99(A))

Current law. Under current law, a pharmacist who violates the requirements discussed above for substituting a generically equivalent drug for a brand name drug and informing the patient or patient's agent of the availability of a generically equivalent drug is guilty of a minor misdemeanor.¹ Each day's violation is a separate offense.

The bill. The bill adds that a pharmacist who fails to comply with the requirements discussed above regarding substituting other brand name or generically equivalent drugs for prescribed brand name drugs intended to treat epilepsy, and the duty to inform when prescriptions for epilepsy are paid by the State of Ohio, is also guilty of a minor misdemeanor and that each day's violation is a separate offense.

HISTORY

ACTION	DATE
Introduced	05-17-06

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¹ The financial sanction for a minor misdemeanor is a fine of no more than \$150 (R.C. 2929.28).