HB 582

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 582 (Delegate Angel, *et al.*)
Health and Government Operations

Pharmacies - Availability of Generically Equivalent Drugs

This bill requires a pharmacy that stocks a brand name drug to stock at least one generically equivalent drug or, on the request of the patient or prescriber, order the generically equivalent drug for delivery to the pharmacy within a reasonable period of time to treat a patient's illness or condition.

Fiscal Summary

State Effect: None. The bill pertains exclusively to private-sector activities.

Local Effect: None.

Small Business Effect: Minimal impact on small business pharmacies to the extent they must carry additional generic drugs or order generic drugs for patients.

Analysis

Current Law: A pharmacist (or the pharmacist's designee) must inform a retail consumer, to the best of the pharmacist's or the pharmacist's designee's knowledge, of (1) the availability of a generically equivalent drug and (2) the approximate cost difference compared to the brand name drug. A pharmacist is exempt from this requirement (1) if a prescription is written for a generic drug; (2) when the prescriber expressly states that the prescription is to be dispensed only as directed; (3) if the pharmacy primarily serves institutional recipients; or (4) when the cost of the prescription is reimbursed by a third-party payer, including Medicaid.

A pharmacist may substitute a generically equivalent drug or device product of the same dosage form and strength for any brand name drug or device product prescribed if (1) the prescriber does not state expressly that the prescription is to be dispensed only as directed; (2) the substitution is recognized in the U.S. Food and Drug Administration's current list of approved drug or device products with therapeutic equivalence evaluations; and (3) the consumer is charged less for the substituted drug or device than the price of the brand name drug or device.

If a generic drug or device is substituted for a brand name drug or device, the pharmacist must notify the patient in writing that the drug or device dispensed is a generic equivalent; the pharmacist must also record on the prescription and keep a record of the name and manufacturer of the substituted drug or device. A pharmacist who substitutes a drug or device in compliance with these requirements incurs no greater liability in filling the prescription by dispensing the equivalent drug or device than would be incurred in filling the prescription by dispensing the prescribed brand name drug or device.

Background: Generic drugs are copies of brand name drugs and are the same in dosage, safety, strength, administration, quality, performance, and intended use. Although generic drugs are chemically identical to their branded counterparts, they are typically sold at substantial discounts. According to the Congressional Budget Office, generic drugs save consumers an estimated $8.0 billion to $10.0 billion a year at retail pharmacies.

Commercial prescription drug plans use preferred drug lists (PDLs) or formularies. Prescription drugs are reviewed for safety, side effects, efficacy, ease of dosage, and cost. A plan may then designate certain preferred brand name drugs for inclusion on a formulary. The Maryland Medicaid program also uses a PDL, which covers most generic versions of multisource brand drugs without prior authorization. However, in some instances, the brand name drug is preferred over the generic because the branded drug is less costly to Medicaid (typically, for newly released generics where the manufacturer rebate for the branded drug makes the net cost to Medicaid less for the branded drug than the generic). Retail pharmacies may be inclined to stock brand-name drugs that are on the Medicaid PDL or preferred brand name drugs on commercial formularies. Thus, the generic equivalent of these drugs may not be available to consumers.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): U.S. Food and Drug Administration; Congressional Budget Office; Department of Health and Mental Hygiene; Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2017
fn/ljm

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510