

SENATE BILL NO. 126—SENATOR ATKINSON

FEBRUARY 18, 2013

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Establishes provisions governing certain acts of pharmacists. (BDR 54-101)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.  
Effect on the State: Yes.

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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 the practice of pharmacy; establishing provisions governing the dispensing of a therapeutically equivalent drug in place of a drug that is prescribed by a practitioner; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law provides for the substitution by a pharmacist of a generic drug for  
2 a prescribed drug if the generic drug is biologically equivalent to and has the same  
3 active ingredients as the prescribed drug. (NRS 639.2583) **Section 1** of this bill  
4 authorizes a pharmacist to dispense a therapeutically equivalent drug in place of a  
5 prescribed drug under certain circumstances if the pharmacist has obtained the  
6 consent of the prescribing practitioner and the person presenting the prescription.  
7 The substitution of a generic drug differs from a therapeutic interchange authorized  
8 by **section 1** in that the therapeutically equivalent drug that is being dispensed is  
9 not biologically equivalent to the prescribed drug. **Sections 2-10** of this bill amend  
10 existing laws that reference the substitution of generic drugs to also reference  
11 therapeutic interchanges.

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

**Section 1.** Chapter 639 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A pharmacist who fills or refills a prescription shall not dispense a therapeutically equivalent drug in place of a drug that*



\* S B 1 2 6 \*

1 *is prescribed by a practitioner unless the pharmacist has obtained*  
2 *consent for the therapeutic interchange from the prescribing*  
3 *practitioner and the person who presents the prescription. The*  
4 *pharmacist may obtain consent through any oral, written or*  
5 *electronic means deemed appropriate by the pharmacist.*

6 *2. Before a pharmacist:*

7 *(a) Discusses a therapeutically equivalent drug with or*  
8 *suggests a therapeutic interchange to a person who presents a*  
9 *prescription, the pharmacist shall discuss the proposed therapeutic*  
10 *interchange with and obtain consent from the prescribing*  
11 *practitioner.*

12 *(b) Dispenses a therapeutically equivalent drug in place of a*  
13 *drug that is prescribed by a practitioner, the pharmacist shall:*

14 *(1) Advise the person who presents the prescription that the*  
15 *pharmacist intends to dispense a therapeutically equivalent drug*  
16 *in place of the drug that is prescribed by the practitioner; and*

17 *(2) Advise the person that he or she may refuse to accept*  
18 *the therapeutically equivalent drug that the pharmacist intends to*  
19 *dispense.*

20 *3. If any natural person or entity, including, without*  
21 *limitation, an insurer or pharmacy benefits manager, provides or*  
22 *offers to provide any financial inducement or reward to a*  
23 *pharmacist to dispense a therapeutically equivalent drug in place*  
24 *of a drug prescribed by a practitioner, the pharmacist shall, in*  
25 *obtaining the consent required by subsections 1 and 2, disclose*  
26 *that fact to the prescribing practitioner and, as applicable, the*  
27 *person who presents the prescription.*

28 *4. A pharmacist who dispenses a therapeutically equivalent*  
29 *drug in place of a drug that is prescribed by a practitioner shall*  
30 *maintain in the health care record of the patient for whom the*  
31 *drug was dispensed a record of the consent obtained pursuant to*  
32 *this section.*

33 *5. If a therapeutically equivalent drug is dispensed in place of*  
34 *a drug that is prescribed by a practitioner pursuant to this section,*  
35 *the pharmacist:*

36 *(a) Shall note the name of the manufacturer, packer or*  
37 *distributor of the drug actually dispensed on the prescription; and*

38 *(b) Unless prohibited by the practitioner, may indicate the*  
39 *therapeutic interchange by writing or typing on the label the words*  
40 *“in place of” following the name of the therapeutically equivalent*  
41 *drug and preceding the name of the prescribed drug.*

42 *6. The provisions of this section also apply to a prescription*  
43 *issued to a person by a practitioner from outside this State.*

44 *7. As used in this section:*



1 (a) "Insurer" means an insurer, carrier, society or health  
2 maintenance organization which provides coverage for  
3 prescription drugs under a policy of health insurance or group  
4 health insurance, a health benefit plan, a benefit contract or a  
5 contract for hospital or medical services governed by chapter  
6 689A, 689B, 689C, 695A, 695B, 695C, 695F or 695G of NRS.

7 (b) "Pharmacy benefits manager" means an administrator, as  
8 defined by NRS 683A.025, who administers coverage for  
9 prescription drugs provided under a policy, plan or contract  
10 described in paragraph (a).

11 (c) "Therapeutic interchange" means the dispensing of a  
12 therapeutically equivalent drug in place of a drug that is  
13 prescribed by a practitioner.

14 (d) "Therapeutically equivalent drug" means a drug that is  
15 expected to produce the same clinical effect and safety profile as a  
16 drug that is prescribed by a practitioner but is not biologically  
17 equivalent to that prescribed drug.

18 **Sec. 2.** NRS 639.259 is hereby amended to read as follows:

19 639.259 No employer of a pharmacist may require the  
20 pharmacist to dispense any specific generic drug in substitution for  
21 another drug if the:

22 1. Substitution is not permitted by the prescription as signed by  
23 a practitioner;

24 2. Substitution would be against the professional judgment of  
25 the pharmacist; or

26 3. Substitution would violate any provision of NRS 639.2583  
27 to 639.2597, inclusive **H**, or **section 1 of this act**.

28 **Sec. 3.** NRS 689A.04045 is hereby amended to read as  
29 follows:

30 689A.04045 1. Except as otherwise provided in this section,  
31 a policy of health insurance which provides coverage for  
32 prescription drugs must not limit or exclude coverage for a drug if  
33 the drug:

34 (a) Had previously been approved for coverage by the insurer  
35 for a medical condition of an insured and the insured's provider of  
36 health care determines, after conducting a reasonable investigation,  
37 that none of the drugs which are otherwise currently approved for  
38 coverage are medically appropriate for the insured; and

39 (b) Is appropriately prescribed and considered safe and effective  
40 for treating the medical condition of the insured.

41 2. The provisions of subsection 1 do not:

42 (a) Apply to coverage for any drug that is prescribed for a use  
43 that is different from the use for which that drug has been approved  
44 for marketing by the Food and Drug Administration;

45 (b) Prohibit:



1 (1) The insurer from charging a deductible, copayment or  
2 coinsurance for the provision of benefits for prescription drugs to  
3 the insured or from establishing, by contract, limitations on the  
4 maximum coverage for prescription drugs;

5 (2) A provider of health care from prescribing another drug  
6 covered by the policy that is medically appropriate for the insured;  
7 or

8 (3) The substitution of another drug pursuant to NRS  
9 639.23286 or 639.2583 to 639.2597, inclusive **†**, *or section 1 of*  
10 *this act*; or

11 (c) Require any coverage for a drug after the term of the policy.

12 3. Any provision of a policy subject to the provisions of this  
13 chapter that is delivered, issued for delivery or renewed on or after  
14 October 1, 2001, which is in conflict with this section is void.

15 **Sec. 4.** NRS 689B.0368 is hereby amended to read as follows:

16 689B.0368 1. Except as otherwise provided in this section, a  
17 policy of group health insurance which provides coverage for  
18 prescription drugs must not limit or exclude coverage for a drug if  
19 the drug:

20 (a) Had previously been approved for coverage by the insurer  
21 for a medical condition of an insured and the insured's provider of  
22 health care determines, after conducting a reasonable investigation,  
23 that none of the drugs which are otherwise currently approved for  
24 coverage are medically appropriate for the insured; and

25 (b) Is appropriately prescribed and considered safe and effective  
26 for treating the medical condition of the insured.

27 2. The provisions of subsection 1 do not:

28 (a) Apply to coverage for any drug that is prescribed for a use  
29 that is different from the use for which that drug has been approved  
30 for marketing by the Food and Drug Administration;

31 (b) Prohibit:

32 (1) The insurer from charging a deductible, copayment or  
33 coinsurance for the provision of benefits for prescription drugs to  
34 the insured or from establishing, by contract, limitations on the  
35 maximum coverage for prescription drugs;

36 (2) A provider of health care from prescribing another drug  
37 covered by the policy that is medically appropriate for the insured;  
38 or

39 (3) The substitution of another drug pursuant to NRS  
40 639.23286 or 639.2583 to 639.2597, inclusive **†**, *or section 1 of*  
41 *this act*; or

42 (c) Require any coverage for a drug after the term of the policy.

43 3. Any provision of a policy subject to the provisions of this  
44 chapter that is delivered, issued for delivery or renewed on or after  
45 October 1, 2001, which is in conflict with this section is void.



1       **Sec. 5.** NRS 689C.168 is hereby amended to read as follows:  
2       689C.168 1. Except as otherwise provided in this section, a  
3 health benefit plan which provides coverage for prescription drugs  
4 must not limit or exclude coverage for a drug if the drug:

5       (a) Had previously been approved for coverage by the carrier for  
6 a medical condition of an insured and the insured's provider of  
7 health care determines, after conducting a reasonable investigation,  
8 that none of the drugs which are otherwise currently approved for  
9 coverage are medically appropriate for the insured; and

10       (b) Is appropriately prescribed and considered safe and effective  
11 for treating the medical condition of the insured.

12       2. The provisions of subsection 1 do not:

13       (a) Apply to coverage for any drug that is prescribed for a use  
14 that is different from the use for which that drug has been approved  
15 for marketing by the Food and Drug Administration;

16       (b) Prohibit:

17       (1) The carrier from charging a deductible, copayment or  
18 coinsurance for the provision of benefits for prescription drugs to  
19 the insured or from establishing, by contract, limitations on the  
20 maximum coverage for prescription drugs;

21       (2) A provider of health care from prescribing another drug  
22 covered by the plan that is medically appropriate for the insured; or

23       (3) The substitution of another drug pursuant to NRS  
24 639.23286 or 639.2583 to 639.2597, inclusive ~~§~~, *or section 1 of*  
25 *this act*; or

26       (c) Require any coverage for a drug after the term of the plan.

27       3. Any provision of a health benefit plan subject to the  
28 provisions of this chapter that is delivered, issued for delivery or  
29 renewed on or after October 1, 2001, which is in conflict with this  
30 section is void.

31       **Sec. 6.** NRS 695A.184 is hereby amended to read as follows:

32       695A.184 1. Except as otherwise provided in this section, a  
33 benefit contract which provides coverage for prescription drugs  
34 must not limit or exclude coverage for a drug if the drug:

35       (a) Had previously been approved for coverage by the society  
36 for a medical condition of an insured and the insured's provider of  
37 health care determines, after conducting a reasonable investigation,  
38 that none of the drugs which are otherwise currently approved for  
39 coverage are medically appropriate for the insured; and

40       (b) Is appropriately prescribed and considered safe and effective  
41 for treating the medical condition of the insured.

42       2. The provisions of subsection 1 do not:

43       (a) Apply to coverage for any drug that is prescribed for a use  
44 that is different from the use for which that drug has been approved  
45 for marketing by the Food and Drug Administration;



1 (b) Prohibit:

2 (1) The society from charging a deductible, copayment or  
3 coinsurance for the provision of benefits for prescription drugs to  
4 the insured or from establishing, by contract, limitations on the  
5 maximum coverage for prescription drugs;

6 (2) A provider of health care from prescribing another drug  
7 covered by the benefit contract that is medically appropriate for the  
8 insured; or

9 (3) The substitution of another drug pursuant to NRS  
10 639.23286 or 639.2583 to 639.2597, inclusive **§**, *or section 1 of*  
11 *this act*; or

12 (c) Require any coverage for a drug after the term of the benefit  
13 contract.

14 3. Any provision of a benefit contract subject to the provisions  
15 of this chapter that is delivered, issued for delivery or renewed on or  
16 after October 1, 2001, which is in conflict with this section is void.

17 **Sec. 7.** NRS 695B.1905 is hereby amended to read as follows:

18 695B.1905 1. Except as otherwise provided in this section, a  
19 contract for hospital or medical services which provides coverage  
20 for prescription drugs must not limit or exclude coverage for a drug  
21 if the drug:

22 (a) Had previously been approved for coverage by the insurer  
23 for a medical condition of an insured and the insured's provider of  
24 health care determines, after conducting a reasonable investigation,  
25 that none of the drugs which are otherwise currently approved for  
26 coverage are medically appropriate for the insured; and

27 (b) Is appropriately prescribed and considered safe and effective  
28 for treating the medical condition of the insured.

29 2. The provisions of subsection 1 do not:

30 (a) Apply to coverage for any drug that is prescribed for a use  
31 that is different from the use for which that drug has been approved  
32 for marketing by the Food and Drug Administration;

33 (b) Prohibit:

34 (1) The insurer from charging a deductible, copayment or  
35 coinsurance for the provision of benefits for prescription drugs to  
36 the insured or from establishing, by contract, limitations on the  
37 maximum coverage for prescription drugs;

38 (2) A provider of health care from prescribing another drug  
39 covered by the contract that is medically appropriate for the insured;  
40 or

41 (3) The substitution of another drug pursuant to NRS  
42 639.23286 or 639.2583 to 639.2597, inclusive **§**, *or section 1 of*  
43 *this act*; or

44 (c) Require any coverage for a drug after the term of the  
45 contract.



1 3. Any provision of a contract for hospital or medical services  
2 subject to the provisions of this chapter that is delivered, issued for  
3 delivery or renewed on or after October 1, 2001, which is in conflict  
4 with this section is void.

5 **Sec. 8.** NRS 695C.1734 is hereby amended to read as follows:

6 695C.1734 1. Except as otherwise provided in this section,  
7 evidence of coverage which provides coverage for prescription  
8 drugs must not limit or exclude coverage for a drug if the drug:

9 (a) Had previously been approved for coverage by the health  
10 maintenance organization or insurer for a medical condition of an  
11 enrollee and the enrollee's provider of health care determines, after  
12 conducting a reasonable investigation, that none of the drugs which  
13 are otherwise currently approved for coverage are medically  
14 appropriate for the enrollee; and

15 (b) Is appropriately prescribed and considered safe and effective  
16 for treating the medical condition of the enrollee.

17 2. The provisions of subsection 1 do not:

18 (a) Apply to coverage for any drug that is prescribed for a use  
19 that is different from the use for which that drug has been approved  
20 for marketing by the Food and Drug Administration;

21 (b) Prohibit:

22 (1) The health maintenance organization or insurer from  
23 charging a deductible, copayment or coinsurance for the provision  
24 of benefits for prescription drugs to the enrollee or from  
25 establishing, by contract, limitations on the maximum coverage for  
26 prescription drugs;

27 (2) A provider of health care from prescribing another drug  
28 covered by the evidence of coverage that is medically appropriate  
29 for the enrollee; or

30 (3) The substitution of another drug pursuant to NRS  
31 639.23286 or 639.2583 to 639.2597, inclusive ~~†~~, *or section 1 of*  
32 *this act*; or

33 (c) Require any coverage for a drug after the term of the  
34 evidence of coverage.

35 3. Any provision of an evidence of coverage subject to the  
36 provisions of this chapter that is delivered, issued for delivery or  
37 renewed on or after October 1, 2001, which is in conflict with this  
38 section is void.

39 **Sec. 9.** NRS 695F.156 is hereby amended to read as follows:

40 695F.156 1. Except as otherwise provided in this section,  
41 evidence of coverage which provides coverage for prescription  
42 drugs must not limit or exclude coverage for a drug if the drug:

43 (a) Had previously been approved for coverage by the prepaid  
44 limited health service organization for a medical condition of an  
45 enrollee and the enrollee's provider of health care determines, after



1 conducting a reasonable investigation, that none of the drugs which  
2 are otherwise currently approved for coverage are medically  
3 appropriate for the enrollee; and

4 (b) Is appropriately prescribed and considered safe and effective  
5 for treating the medical condition of the enrollee.

6 2. The provisions of subsection 1 do not:

7 (a) Apply to coverage for any drug that is prescribed for a use  
8 that is different from the use for which that drug has been approved  
9 for marketing by the Food and Drug Administration;

10 (b) Prohibit:

11 (1) The organization from charging a deductible, copayment  
12 or coinsurance for the provision of benefits for prescription drugs to  
13 the enrollee or from establishing, by contract, limitations on the  
14 maximum coverage for prescription drugs;

15 (2) A provider of health care from prescribing another drug  
16 covered by the evidence of coverage that is medically appropriate  
17 for the enrollee; or

18 (3) The substitution of another drug pursuant to NRS  
19 639.23286 or 639.2583 to 639.2597, inclusive ~~H~~, *or section 1 of*  
20 *this act*; or

21 (c) Require any coverage for a drug after the term of the  
22 evidence of coverage.

23 3. Any provision of an evidence of coverage subject to the  
24 provisions of this chapter that is delivered, issued for delivery or  
25 renewed on or after October 1, 2001, which is in conflict with this  
26 section is void.

27 **Sec. 10.** NRS 695G.166 is hereby amended to read as follows:

28 695G.166 1. Except as otherwise provided in this section, a  
29 health care plan which provides coverage for prescription drugs  
30 must not limit or exclude coverage for a drug if the drug:

31 (a) Had previously been approved for coverage by the managed  
32 care organization for a medical condition of an insured and the  
33 insured's provider of health care determines, after conducting a  
34 reasonable investigation, that none of the drugs which are otherwise  
35 currently approved for coverage are medically appropriate for the  
36 insured; and

37 (b) Is appropriately prescribed and considered safe and effective  
38 for treating the medical condition of the insured.

39 2. The provisions of subsection 1 do not:

40 (a) Apply to coverage for any drug that is prescribed for a use  
41 that is different from the use for which that drug has been approved  
42 for marketing by the Food and Drug Administration;

43 (b) Prohibit:

44 (1) The organization from charging a deductible, copayment  
45 or coinsurance for the provision of benefits for prescription drugs to





- 1 the insured or from establishing, by contract, limitations on the  
2 maximum coverage for prescription drugs;
- 3 (2) A provider of health care from prescribing another drug  
4 covered by the plan that is medically appropriate for the insured; or  
5 (3) The substitution of another drug pursuant to NRS  
6 639.23286 or 639.2583 to 639.2597, inclusive ~~§~~, *or section 1 of*  
7 *this act*; or
- 8 (c) Require any coverage for a drug after the term of the plan.
- 9 3. Any provision of a health care plan subject to the provisions  
10 of this chapter that is delivered, issued for delivery or renewed on or  
11 after October 1, 2001, which is in conflict with this section is void.







