H.289

Introduced by Representatives Keenan of St. Albans City, Beyor of Highgate, Connor of Fairfield, Dickinson of St. Albans Town, Fiske of Enosburgh, Gamache of Swanton, Parent of St. Albans City, Pearce of Richford, and Savage of Swanton

Referred to Committee on

Date:

Subject: Health; pharmacists; biological products; generics

Statement of purpose of bill as introduced: This bill proposes to direct pharmacists to fill prescriptions for biological products with an interchangeable biological product unless otherwise specified by the prescriber or the purchaser.

An act relating to generic substitution for biological products

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. § 4601 is amended to read:

§ 4601. DEFINITIONS

~~For the purposes of~~ As used in this chapter, unless the context otherwise clearly requires:

(1) "Brand name" means the registered trademark name given to a drug or biological product by its manufacturer or distributor~~;~~.

(2) "Generic name" means the official name of a drug product as established by the United States Adopted Names Council (USAN) or its successor, if applicable~~;~~.

(3) "Pharmacist" means a natural person licensed by the ~~state board of pharmacy~~ State Board of Pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons~~;~~.

(4) "Generic drug" means a drug listed by generic name and considered to be chemically and therapeutically equivalent to a drug listed by brand name, as both names are identified in the most recent edition of the federal Food and Drug Administration's "Orange Book" of approved drug products~~;~~.

(5) "Prescriber" means any duly licensed physician, dentist, veterinarian, or other practitioner licensed to write prescriptions for the treatment or prevention of disease in man or animal~~;~~.

(6) "Biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition in human beings.

(7) "Interchangeable" means that a biological product that is biologically highly similar to a reference product and can be expected to

produce the same clinical result in any given patient in accordance with the provisions of 42 U.S.C. § 262(k) and may be substituted for the reference product without the intervention of the prescriber.

(8) "Reference product" means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which the U.S. Food and Drug Administration has evaluated another product to determine whether they are interchangeable.

Sec. 2. 18 V.S.A. § 4605 is amended to read:

§ 4605. ALTERNATIVE DRUG OR BIOLOGICAL PRODUCT SELECTION

(a)(1) When a pharmacist receives a prescription for a drug which is listed either by generic name or brand name in the most recent edition of the U.S. Department of Health and Human Services' publication Approved Drug Products With Therapeutic Equivalence (the "Orange Book") of approved drug products, the pharmacist shall select the lowest priced drug from the list which is equivalent as defined by the "Orange Book," unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, otherwise to pay the full cost for the higher priced drug.

(2) When a pharmacist receives a prescription for a biological product, whether listed by brand name or international nonproprietary name, and the U.S. Food and Drug Administration has approved one or more additional biological products as interchangeable for the reference product, the pharmacist shall select the lowest priced biological product from among those the U.S. Food and Drug Administration has determined to be interchangeable unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, otherwise to pay the full cost for the higher biological product.

(b) The purchaser shall be informed by the pharmacist or his or her representative that an alternative selection as provided under subsection (a) of this section will be made unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, otherwise to pay the full cost for the higher priced drug or biological product.

(c) When refilling a prescription, pharmacists shall receive the consent of the prescriber to dispense a drug or biological product different from that originally dispensed, and shall inform the purchaser that a ~~generic~~ substitution shall be made pursuant to this section unless the purchaser agrees to pay any

additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, otherwise to pay the full cost for the higher priced drug or biological product.

(d) Any pharmacist substituting a generically equivalent drug or interchangeable biological product shall charge no more than the usual and customary retail price for that selected drug or biological product. This charge shall not exceed the usual and customary retail price for the prescribed brand.

Sec. 3. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

If the prescriber has determined that the generic equivalent of a drug or the interchangeable biological product for the reference product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank and the pharmacist shall not substitute the generic equivalent drug or interchangeable biological product. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug or the interchangeable biological product for the reference product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating

the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug or biological product is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent drug or interchangeable biological product.

Sec. 4. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the ~~state~~ State shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent drug or interchangeable biological product for the drug or product prescribed unless you or your physician direct otherwise. Ask your pharmacist."

(b) The label of the container of all drugs and biological products dispensed by a pharmacist under this chapter shall indicate the generic name using an abbreviation if necessary or the international nonproprietary name for a biological product, the strength of the drug or product, if applicable, and the name or number of the manufacturer or distributor.

Sec. 5. 18 V.S.A. § 4608 is amended to read:

§ 4608. LIABILITY

(a) Nothing in this chapter shall affect a licensed hospital with the development and maintenance of a hospital formulary system in accordance with that institution's policies and procedures that pertain to its drug distribution system developed by the medical staff in cooperation with the hospital's pharmacist and administration.

(b) The substitution of a drug or biological product by a pharmacist under the provisions of this chapter does not constitute the practice of medicine.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2015.