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H.447

Introduced by Representatives Copeland-Hanzas of Bradford, Hebert of
Vernon, and Stuart of Brattleboro

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 interchangeable 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 this chapter, unless the context otherwise clearly
requires~~ As used in this chapter:

(1) ~~“Brand name” means the registered trademark name given to a drug
product by its manufacturer or distributor;~~ “Biological product” means a virus,
therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or
derivative, allergenic product, protein (except any chemically synthesized

1 polypeptide), or analogous product, or arsphenamine or derivative of
2 arsphenamine (or any other trivalent organic arsenic compound), applicable to
3 the prevention, treatment, or cure of a disease or condition in human beings.

4 (2) ~~“Generic name” means the official name of a drug product as~~
5 ~~established by the United States Adopted Names Council (USAN) or its~~
6 ~~successor, if applicable; “Brand name” means the registered trademark name~~
7 given to a drug product by its manufacturer or distributor.

8 (3) ~~“Pharmacist” means a natural person licensed by the state board of~~
9 ~~pharmacy to prepare, compound, dispense, and sell drugs, medicines,~~
10 ~~chemicals, and poisons;~~

11 (4) “Generic drug” means a drug listed by generic name and considered
12 to be chemically and therapeutically equivalent to a drug listed by brand name,
13 as both names are identified in the most recent edition of or supplement to the
14 ~~federal U.S. Food and Drug Administration’s “Orange Book” of approved drug~~
15 ~~products; Approved Drug Products with Therapeutic Equivalence Evaluations~~
16 (the Orange Book).

17 (4) “Generic name” means the official name of a drug product as
18 established by the U. S. Adopted Names Council (USAN) or its successor, if
19 applicable.

20 (5) “Interchangeable biological product” means a biological product that
21 the U.S. Food and Drug Administration has:

1 (A) licensed and determined, pursuant to 42 U.S.C. § 262(k)(4), to be
2 interchangeable with the reference product against which it was evaluated; or

3 (B) determined to be therapeutically equivalent as set forth in the
4 latest edition of or supplement to the U.S. Food and Drug Administration’s
5 Approved Drug Products with Therapeutic Equivalence Evaluations (the
6 Orange Book).

7 (6) “Pharmacist” means a natural person licensed by the State Board of
8 Pharmacy to prepare, compound, dispense, and sell drugs, medicines,
9 chemicals, and poisons.

10 ~~(5)~~(7) “Prescriber” means any duly licensed physician, dentist,
11 veterinarian, or other practitioner licensed to write prescriptions for the
12 treatment or prevention of disease in man or animal.

13 (8) “Proper name” means the non-proprietary name of a biological
14 product.

15 (9) “Reference product” means the single biological product licensed
16 pursuant to 42 U.S.C. § 262(a) against which the interchangeable biological
17 product was evaluated by the U.S. Food and Drug Administration pursuant to
18 42 U.S.C. § 262(k).

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

2 § 4605. ALTERNATIVE DRUG OR BIOLOGICAL PRODUCT

3 SELECTION

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

15 (2) When a pharmacist receives a prescription for a biological product,
16 the pharmacist shall select the lowest priced biological product that is listed as
17 interchangeable in the U.S. Food and Drug Administration's Lists of Licensed
18 Biological Products with Reference Product Exclusivity and Biosimilarity or
19 Interchangeability Evaluations (the "Purple Book") unless otherwise instructed
20 by the prescriber, or by the purchaser if the purchaser agrees to pay any
21 additional cost in excess of the benefits provided by the purchaser's health

1 benefit plan if allowed under the legal requirements applicable to the plan, or
2 otherwise to pay the full cost for the higher priced biological product.

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

9 (c) When refilling a prescription, pharmacists shall receive the consent of
10 the prescriber to dispense a drug or biological product different from that
11 originally dispensed, and shall inform the purchaser that a ~~generic~~ substitution
12 shall be made pursuant to this section unless the purchaser agrees to pay any
13 additional cost in excess of the benefits provided by the purchaser's health
14 benefit plan if allowed under the legal requirements applicable to the plan, or
15 otherwise to pay the full cost for the higher priced drug or biological product.

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

20 (e)(1) Except as described in subdivision (4) of this subsection, within five
21 business days following the dispensing of a biological product, the dispensing

1 pharmacist or designee shall communicate the specific biological product
2 provided to the patient, including the biological product's name and
3 manufacturer, by submitting the information in a format that is accessible to
4 the prescriber electronically through one of the following:

5 (A) an interoperable electronic medical records system;

6 (B) an electronic prescribing technology;

7 (C) a pharmacy benefit management system; or

8 (D) a pharmacy record.

9 (2) Entry into an electronic records system as described in subdivision
10 (1) of this subsection shall be presumed to provide notice to the prescriber.

11 (3) If a pharmacy does not have access to one or more of the electronic
12 systems described in subdivision (1) of this subsection, the pharmacist or
13 designee shall communicate to the prescriber the information regarding the
14 biological product dispensed using telephone, facsimile, electronic
15 transmission, or other prevailing means.

16 (4) Notwithstanding any provision of this subsection to the contrary, a
17 pharmacist shall not be required to communicate information regarding the
18 biological product dispensed in the following circumstances:

19 (A) the U.S. Food and Drug Administration has not approved any
20 interchangeable biological products for the product prescribed; or

1 (B) the pharmacist dispensed a refill prescription in which the
2 product dispensed was unchanged from the product dispensed at the prior
3 filling of the prescription.

4 (f) The Board of Pharmacy shall maintain a link on its website to the
5 current lists of all biological products that the U.S. Food and Drug
6 Administration has determined to be interchangeable biological products.

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

8 § 4606. BRAND CERTIFICATION

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

1 adverse or harmful reactions in the patient, the prescriber shall expressly
2 indicate to the pharmacist that the brand-name drug or biological product is
3 necessary and substitution is not allowed and the pharmacist shall not
4 substitute the generic equivalent drug or interchangeable biological product.

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

6 § 4607. INFORMATION; LABELING

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

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

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

19 § 4608. LIABILITY

20 (a) Nothing in this chapter shall affect a licensed hospital with the
21 development and maintenance of a hospital formulary system in accordance

1 with that institution's policies and procedures that pertain to its drug
2 distribution system developed by the medical staff in cooperation with the
3 hospital's pharmacist and administration.

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

7 Sec. 6. EFFECTIVE DATE

8 This act shall take effect on July 1, 2017.