Amendment No. 146

Assembly Amendment to Assembly Bill No. 221 (BDR 54-1015)

Proposed by: Assembly Committee on Commerce and Labor

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted ☐	Lost ☐		Adopted ☐	Lost ☐	
Concurred In ☐	Not ☐		Concurred In ☐	Not ☐	
Receded ☐	Not ☐		Receded ☐	Not ☐	

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold underlining** is newly added transitory language.

SLP/MSN Date: 4/10/2011

A.B. No. 221—Establishes provisions governing certain acts of pharmacists.
(BDR 54-1015)

ASSEMBLY BILL NO. 221–COMMITTEE
ON COMMERCE AND LABOR

MARCH 1, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Establishes provisions governing certain acts of pharmacists. (BDR 54-1015)

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~~] **therapeutic alternative** 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:

Existing law provides for the substitution by a pharmacist of a generic drug for a prescribed drug if the generic drug is biologically equivalent to and has the same active ingredients as the prescribed drug. (NRS 639.2583) **Section 1** of this bill authorizes a pharmacist to dispense a [~~therapeutically equivalent~~] **therapeutic alternative** drug in place of a prescribed drug under certain circumstances if the pharmacist has obtained the consent of the prescribing practitioner **.** [~~and the person presenting the prescription.~~] The substitution of a generic drug differs from a therapeutic interchange authorized by **section 1** in that the [~~therapeutically equivalent~~] **therapeutic alternative** drug that is being dispensed is not [~~biologically~~] **pharmaceutically** equivalent to the prescribed drug. **Sections 2-10** of this bill amend existing laws that reference the substitution of generic drugs to also reference 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]~~ therapeutic alternative drug in place of a drug that is prescribed by a practitioner unless the pharmacist has obtained consent for such therapeutic interchange from the prescribing practitioner . ~~[and the person who presents the prescription.]~~ The pharmacist may obtain consent through any oral, written or electronic means deemed appropriate by the pharmacist.

2. ~~[Before a pharmacist:~~

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

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

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

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

~~3. A pharmacist who dispenses a therapeutically equivalent drug in place of a drug that is prescribed by a practitioner shall maintain in the health care record of the patient for whom the drug was dispensed a record of the consent obtained pursuant to this section.~~

~~4. If a therapeutically equivalent drug is dispensed in place of a drug that is prescribed by a practitioner pursuant to this section, the pharmacist or practitioner:~~

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

~~(b) Unless prohibited by the practitioner, may indicate the therapeutic interchange by writing or typing on the label the words "in place of" following the name of the therapeutically equivalent drug and preceding the name of the prescribed drug.~~

~~5. The provisions of this section also apply to a prescription issued to a person by a practitioner from outside this State.~~

~~6.]~~ As used in this section:

(a) "Food and Drug Administration" means the United States Food and Drug Administration of the United States Department of Health and Human Services.

(b) "Therapeutic alternative drug" means a drug that is:

(1) Approved by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq.;

(2) In the same therapeutic class and approved for the same indication as another drug; and

(3) Not a therapeutically equivalent drug.

(c) "Therapeutic interchange" means the dispensing of a ~~[therapeutically equivalent]~~ therapeutic alternative drug . ~~[in place of a drug that is prescribed by a practitioner.~~

~~(b)]~~

(d) "Therapeutically equivalent drug" means a drug that is ~~[expected to produce the same clinical effect and safety profile as a drug that is prescribed by a practitioner but is not biologically equivalent to that prescribed drug.]~~ :

(1) Approved by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq.;

(2) Pharmaceutically equivalent, based on the scientific and medical evaluations of the Food and Drug Administration, to a brand name drug, including, without limitation, having the same active ingredient, dosage form, strength and route of administration, and is bioequivalent to the brand name drug; and

(3) Assigned a therapeutic equivalence code starting with the letter "A" in accordance with the most recently published edition of the "Approved Drug Products with Therapeutic Equivalence Evaluations" published by the Food and Drug Administration and any cumulative supplements thereto.

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

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

1. Substitution is not permitted by the prescription as signed by a practitioner;
2. Substitution would be against the professional judgment of the pharmacist; or
3. Substitution would violate any provision of NRS 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act.***

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

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

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

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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

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

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

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

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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

Sec. 5. NRS 689C.168 is hereby amended to read as follows:

689C.168 1. Except as otherwise provided in this section, a health benefit plan which provides coverage for prescription drugs must not limit or exclude coverage for a drug if the drug:

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

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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

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

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

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

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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

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

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

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

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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

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

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

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

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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

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

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

(a) Had previously been approved for coverage by the prepaid limited health service organization for a medical condition of an enrollee and the enrollee's provider of health care determines, after conducting a reasonable investigation, that none of the drugs which are otherwise currently approved for coverage are medically appropriate for the enrollee; and

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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

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

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

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

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

2. The provisions of subsection 1 do not:

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

(b) Prohibit:

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

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

(3) The substitution of another drug pursuant to NRS 639.23286 or 639.2583 to 639.2597, inclusive ~~[.]~~ ***, and section 1 of this act;*** or

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

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