

STORAGE NAME: h0069a.hr.doc

DATE: February 6, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH REGULATION
ANALYSIS**

BILL #: HB 69

RELATING TO: Drugs/Generic and Brand-Name

SPONSOR(S): Representative(s) Argenziano, Fasano, and others

TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH REGULATION YEAS 10 NAYS 0
- (2) FISCAL POLICY & RESOURCES
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

This bill requires the Board of Pharmacy and the Board of Medicine to remove from the Negative Drug Formulary all drugs that have been determined to be therapeutically equivalent or "A-B" rated by the United States Food and Drug Administration. The bill specifies that physicians may still prohibit generic substitution of these drugs by writing "medically necessary" on the prescription in accordance with current law.

On February 6, 2001, the Committee on Health Regulation adopted one amendment which is traveling with the bill. This amendment clarifies that only those drugs where every product marketed has been determined to be therapeutically equivalent will be removed from the Negative Drug Formulary.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 465.025, F.S., provides for the automatic substitution of generic drugs for brand name drugs, an action that is intended to provide for a more economical generic equivalent for the patient. Subsection (6), provides a mechanism to restrict the substitution of certain drug products when the Board of Medicine and the Board of Pharmacy have determined that substitution of that particular drug "would pose a threat to the health and safety of patients." This mechanism is called a "negative drug formulary."

Established over twenty years ago, the negative formulary currently contains eleven drugs listed by generic name. The boards have employed outside consultants and have named a joint committee to provide recommendations when petitions for modifications have been received. The five-person joint committee includes two pharmacist members of the Board of Pharmacy and two physician members of the Board of Medicine. The Boards vote independently on the petition and must concur for a modification to occur.

The federal Food and Drug Administration (FDA) reviews generic drugs and determines which generics should be rated therapeutically equivalent. Those therapeutically equivalent generic drugs are then published in the FDA's *Approved Drug Products with Therapeutic Equivalence Evaluations*, more commonly known as the "Orange Book." Pharmacists rely on the information contained in the FDA Orange Book when determining which generic drugs may be safely substituted for brand name drugs.

An example of how this automatic substitution process occurs in Florida:

Doctors usually write prescriptions using the brand name drug since those brand names are made known to the doctor through marketing by pharmaceutical manufacturers and wholesalers and through reading medical literature. The patient then takes the prescription to the pharmacy of his or her choice and the pharmacist fills that prescription. The pharmacist will automatically dispense a generic form of the drug instead of the brand name version unless the patient asks for the brand name only and is willing to pay for the difference in cost, if any, OR if the doctor has written on the face of the prescription in his own handwriting the words "MEDICALLY NECESSARY." The third exception to the automatic substitution of a generic drug for the brand name drug is when the drug is listed on the negative drug formulary. When a doctor writes an outpatient prescription for a brand name version of a drug listed on the negative drug formulary,

substitution of the generic drug by the pharmacist is precluded. The pharmacist may only dispense the brand name drug as written by the doctor.

The negative formulary restriction applies only in the community pharmacy setting, e.g. Eckerd, Walgreens. Institutional pharmacies, such as hospital inpatient settings and correctional facilities, are specifically exempted by statute and may substitute a generic drug for the brand-name even if the doctor's orders are written for the brand-name drug and the drug is listed on Florida's negative drug formulary.

Although the generic versions of the drugs are currently available to consumers when the prescription is written by the doctor specifically for the generic drug, removal of therapeutically equivalent generic drugs from the negative formulary could facilitate expanded use of the generic versions of these drugs.

One of the drugs listed on the negative drug formulary is Warfarin, also known as Warfarin Sodium. The brand name drug, Coumadin®, is manufactured by DuPont Pharmaceuticals Company. There are at least three generic drug manufacturers, including Barr Laboratories, which have developed a generic drug determined by the FDA to be therapeutically equivalent. Barr Laboratories previously filed a petition with the Florida Board of Pharmacy and the Florida Board of Medicine requesting that Warfarin be removed from the negative drug formulary. However, prior to final action by the Board of Medicine and the Board of Pharmacy, the petition was withdrawn. Since the boards have not removed Warfarin from the negative drug formulary in Florida, pharmacists are precluded from automatically substituting generic Warfarin whenever a prescription is written by a doctor for Coumadin®.

C. EFFECT OF PROPOSED CHANGES:

This bill requires the Board of Pharmacy and the Board of Medicine to remove from the Negative Drug Formulary all drugs that have been determined to be therapeutically equivalent or "A-B" rated by the United States Food and Drug Administration. The bill specifies that physicians may still prohibit generic substitution of these drugs by writing "medically necessary" on the prescription in accordance with current law.

According to the Florida Department of Health, this bill would remove four of the eleven drugs from the Negative Drug Formulary and allow automatic substitution of the generic drug for those four.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Effective July 1, 2001, requires the Board of Pharmacy and the Board of Medicine to remove from the Negative Drug Formulary all drugs that have been determined to be therapeutically equivalent or "A-B" rated by the United States Food and Drug Administration.

Section 2. Specifies that physicians may still prohibit generic substitution of these drugs by writing "medically necessary" on the prescription in accordance with current law.

Section 3. Provides effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

D. FISCAL COMMENTS:

The Department of Health, Bureau of Pharmacy Services, reports that the fiscal impact to the state would be a savings of \$103,785 annually. This includes all drug purchases by the state, including all state agencies, institutions, and political subdivisions.

The Agency for Health Care Administration, Division of Medicaid, estimates that using the less expensive generic equivalent instead of the brand-name drug would save the state approximately \$4 million per year. However, the agency notes that the reduction in rebates from the brand-name manufacturer may offset the savings to the state.

The Agency for Health Care Administration anticipates that patients and commercial insurers could benefit from this bill since they do not participate in the federal rebate program. Additionally, the agency reports that increased competition in the generic market for these products would be expected to result in lower generic drug prices which could ultimately benefit Medicaid as well.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that cities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with cities or counties.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide any new specific rulemaking authority. However, it does require the Board of Pharmacy and Board of Medicine to amend an existing rule.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 6, 2001, the Committee on Health Regulation adopted one amendment, which is traveling with the bill. This amendment clarifies that only those drugs where every product marketed has been determined to be therapeutically equivalent will be removed from the Negative Drug Formulary.

VI. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

Staff Director:

Lucretia Shaw Collins

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