

By: Wentworth

S.B. No. 1476

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to regulation of dispensing brand name and generic  
3 prescriptions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 562.007, Occupations Code, is amended to  
6 read as follows:

7 Sec. 562.007. REFILLS. A properly authorized prescription  
8 refill shall follow the original dispensing instruction unless  
9 otherwise indicated by the practitioner or the practitioner's  
10 agent. A prescription may not be refilled with a generic equivalent  
11 if the original prescription form or dispensing directive required  
12 a specifically prescribed brand as medically necessary.

13 SECTION 2. Section 562.008, Occupations Code, is amended to  
14 read as follows:

15 Sec. 562.008. GENERIC EQUIVALENT AUTHORIZED. (a) If a  
16 practitioner certifies on the prescription form that a specific  
17 prescribed brand is medically necessary, the pharmacist shall  
18 dispense the drug as written by the practitioner. The pharmacist  
19 may substitute a generically equivalent drug only if the  
20 practitioner certifies on the written prescription form that  
21 substitution is permitted. A [The] certification must be made as  
22 required by the dispensing directive adopted under Section 562.015.  
23 This subchapter does not permit a pharmacist to substitute a  
24 generically equivalent drug unless the substitution is made as

1 provided by this subchapter.

2 (b) Except as otherwise provided by this subchapter, a  
3 pharmacist who receives a prescription for a drug for which there is  
4 one or more generic equivalents may dispense any of the generic  
5 equivalents if otherwise permitted by the prescription or  
6 dispensing directive.

7 SECTION 3. Section 562.009(a), Occupations Code, is amended  
8 to read as follows:

9 (a) A pharmacist who selects a generically equivalent drug  
10 as authorized by this subchapter shall:

11 (1) personally, or through the pharmacist's agent or  
12 employee, and before delivery of a generically equivalent drug  
13 inform the patient or the patient's agent that a less expensive  
14 generically equivalent drug has been substituted for the brand  
15 prescribed and that the patient or the patient's agent is entitled  
16 to refuse that substitution; or

17 (2) display, in a prominent place that is in clear  
18 public view where prescription drugs are dispensed, a sign in block  
19 letters not less than one inch in height that reads, in both English  
20 and Spanish:

21 "TEXAS LAW ALLOWS A LESS EXPENSIVE GENERICALLY  
22 EQUIVALENT DRUG TO BE SUBSTITUTED FOR CERTAIN BRAND  
23 NAME DRUGS ONLY IF [UNLESS] YOUR PHYSICIAN AUTHORIZES  
24 SUBSTITUTION [DIRECTS OTHERWISE]. YOU HAVE A RIGHT TO  
25 REFUSE SUCH SUBSTITUTION. CONSULT YOUR PHYSICIAN OR  
26 PHARMACIST CONCERNING THE AVAILABILITY OF A SAFE, LESS  
27 EXPENSIVE DRUG FOR YOUR USE."

1 SECTION 4. Section 562.015, Occupations Code, is amended to  
2 read as follows:

3 Sec. 562.015. DISPENSING DIRECTIVE; COMPLIANCE WITH  
4 FEDERAL LAW. (a) The board shall adopt rules to provide a  
5 dispensing directive to instruct pharmacists on the manner in which  
6 to dispense a drug according to the contents of a written  
7 prescription or an electronically transmitted prescription. The  
8 rules adopted under this section must:

9 (1) require the physician to sign on a line marked:

10 (A) [~~the use of the phrase~~] "brand necessary" [~~or~~  
11 ~~"brand medically necessary"~~] on a prescription form to prohibit the  
12 substitution of a generically equivalent drug for a brand name  
13 drug; or

14 (B) "substitution permitted" on a prescription  
15 form to permit the substitution of a generically equivalent drug  
16 for a brand name drug;

17 (2) be in a format that protects confidentiality as  
18 required by the Health Insurance Portability and Accountability Act  
19 of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent  
20 amendments;

21 (3) comply with federal and state law, including  
22 rules, with regard to formatting and security requirements;

23 (4) be developed to coordinate with 42 C.F.R. Section  
24 447.331(c); and

25 (5) require that an electronically transmitted  
26 prescription include "brand necessary" or "brand medically  
27 necessary" to prohibit the substitution of a generically equivalent

1 drug for a brand name drug [~~include an exemption for electronic~~  
2 ~~prescriptions as provided by Subsection (b)~~].

3 (b) [~~The board shall provide an exemption from the directive~~  
4 ~~adopted under this section for prescriptions transmitted~~  
5 ~~electronically.~~] The board may regulate the use of electronic  
6 prescriptions in the manner provided by federal law, including  
7 rules.

8 SECTION 5. Not later than January 1, 2006, the Texas State  
9 Board of Pharmacy shall adopt rules as required by Section 562.015,  
10 Occupations Code, as amended by this Act.

11 SECTION 6. This Act takes effect September 1, 2005.