

By: Janek, Shapleigh

S.B. No. 409

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to restrictions on the interchange of anti-epileptic drugs  
3 and drugs used to treat or prevent seizures.

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

5 SECTION 1. Section 562.014, Occupations Code, is amended to  
6 read as follows:

7 Sec. 562.014. APPLICATION TO NARROW THERAPEUTIC INDEX  
8 DRUGS. (a) Except as provided by this section, drug selection as  
9 authorized by this subchapter does not apply to the refill of a  
10 prescription for a narrow therapeutic index drug. The board, in  
11 consultation with the Texas [~~State Board of~~] Medical Board  
12 [~~Examiners~~], shall by rule establish a list of narrow therapeutic  
13 index drugs to which this subsection applies. A prescription for a  
14 narrow therapeutic index drug may be refilled only by using the same  
15 drug product by the same manufacturer that the pharmacist last  
16 dispensed under the prescription, unless otherwise agreed to by the  
17 prescribing practitioner [~~physician~~]. If a pharmacist does not  
18 have the same drug product by the same manufacturer in stock to  
19 refill the prescription, the pharmacist may dispense a drug product  
20 that is generically equivalent if the pharmacist, before dispensing  
21 the generically equivalent drug product, notifies:

22 (1) the patient, at the time the prescription is  
23 dispensed, that a substitution of the prescribed drug product has  
24 been made; and

1           (2) the prescribing practitioner [~~physician~~] of the  
2 drug product substitution by telephone, facsimile, or mail, at the  
3 earliest reasonable time, but not later than 72 hours after  
4 dispensing the prescription.

5           (b) The board, in consultation with the Texas Medical Board,  
6 shall include all anti-epileptic drugs, as defined by Section  
7 562.0141(a), in the list of narrow therapeutic index drugs.

8           (c) Notwithstanding any other provision of law, this  
9 section applies to the refill of a prescription for a narrow  
10 therapeutic index drug only if the prescribing practitioner  
11 indicates on the prescription or in the directions on the  
12 prescription that the drug is for the treatment of epilepsy or  
13 seizures, as those terms are defined by Section 562.0141(a).

14           SECTION 2. Subchapter A, Chapter 562, Occupations Code, is  
15 amended by adding Section 562.0141 to read as follows:

16           Sec. 562.0141. ANTI-EPILEPTIC DRUG PRODUCT SELECTION  
17 PROHIBITED. (a) In this section:

18                   (1) "Anti-epileptic drug" means:

19                           (A) any drug prescribed for the treatment of  
20 epilepsy; or

21                           (B) a drug used to treat or prevent seizures.

22                   (2) "Epilepsy" means a neurological condition  
23 characterized by recurrent seizures.

24                   (3) "Seizure" means an acute clinical change secondary  
25 to a brief disturbance in the electrical activity of the brain.

26                   (4) "Interchange" means the substitution of one  
27 version of the same anti-epileptic drug, including a generic

1 version for the prescribed brand, a brand version for the  
2 prescribed generic version, a generic version by one manufacturer  
3 for a generic version by a different manufacturer, a different  
4 formulation of the prescribed anti-epileptic drug or a different  
5 anti-epileptic drug for the anti-epileptic drug originally  
6 prescribed.

7 (b) Notwithstanding Section 562.014, a pharmacist may not  
8 interchange an anti-epileptic drug or formulation of an  
9 anti-epileptic drug, brand or generic, for the treatment of a  
10 patient with seizures or epilepsy without prior notification of and  
11 the signed informed consent of such interchange from the  
12 prescribing physician.

13 (c) To comply with Subsection (b), a pharmacist may document  
14 the notification of a prescribing physician and secure the informed  
15 written consent of such physician by contacting the physician  
16 orally or electronically to secure permission to interchange an  
17 anti-epileptic drug or formulation of an anti-epileptic drug, brand  
18 or generic, and reducing such consent to writing. If the  
19 prescribing physician does not authorize a substitute, such denial  
20 shall also be documented in the same manner and format. A copy of  
21 such communication shall be forwarded to the physician and a copy  
22 kept with the records of the pharmacist. The documented  
23 notification and consent under this subsection shall be considered  
24 as a statement that the prescription is "brand medically necessary"  
25 and shall be considered part of the prescription, if applicable.

26 (d) A pharmacist may provide an emergency refill of an  
27 anti-epileptic drug under Section 562.054. Notwithstanding any

1 other provision of this section, a pharmacist may interchange drug  
2 products in order to provide an emergency refill of an  
3 anti-epileptic drug if the pharmacist is not able to provide the  
4 emergency refill without interchanging drug products.

5 (e) This section applies to a drug provided to a Medicaid  
6 recipient in a state fiscal year only if the Health and Human  
7 Services Commission determines that funding is available to provide  
8 the version of drug required under this section. The Health and  
9 Human Services Commission shall notify the board of its  
10 determination before September 1 of each year.

11 SECTION 3. Section 562.009, Occupations Code, is amended by  
12 adding Subsection (e) to read as follows:

13 (e) If the prescription is for an "anti-epileptic drug" as  
14 defined by Section 562.0141(a)(1), the pharmacist must comply with  
15 the provisions of Section 562.0141.

16 SECTION 4. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2007.