



28 AMENDS:

29 **58-17a-605.1**, as last amended by Chapter 18, Laws of Utah 2002, Fifth Special Session



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **58-17a-605.1** is amended to read:

33 **58-17a-605.1. Restrictive drug formulary prohibited -- Dispensing of generic**  
34 **drugs.**

35 (1) As used in this section:

36 (a) "generic form" means a prescription drug that is available in generic form and has  
37 an A rating in the United States Pharmacopeia and Drug Index;

38 (b) "legend drug" means any drug that requires a prescription under state or federal  
39 law; and

40 (c) "restrictive drug formulary" means a list of legend drugs, other than drugs for  
41 cosmetic purposes, that are prohibited by the Utah Department of Health from dispensation, but  
42 are approved by the federal Food and Drug Administration.

43 (2) A practitioner may prescribe legend drugs in accordance with this chapter that, in  
44 his professional judgment and within the lawful scope of his practice, he considers appropriate  
45 for the diagnosis and treatment of his patient.

46 (3) Except as provided in Subsection (4), the Utah Department of Health may not  
47 maintain a restrictive drug formulary that restricts a physician's ability to treat a patient with a  
48 legend drug that has been approved and designated as safe and effective by the federal Food  
49 and Drug Administration, except for drugs for cosmetic purposes.

50 (4) When a multisource legend drug is available in the generic form, the Department of  
51 Health may only reimburse for the generic form of the drug unless the treating physician  
52 demonstrates to the Department of Health a medical necessity for dispensing the nongeneric,  
53 brand-name legend drug.

54 (5) This section does not affect the state's ability to exercise the exclusion options  
55 available under the federal Omnibus Budget Reconciliation Act of 1990.

56 (6) Except as otherwise provided in this section, if a practitioner has prescribed a drug  
57 by brand name and the practitioner has not indicated, by a method set forth in Subsection (10),  
58 that a substitution is prohibited, the pharmacist who fills or refills the prescription shall

59 dispense, in substitution, another drug which is available to him if the other drug:

60 (a) is less expensive than the drug prescribed by brand name;

61 (b) is biologically equivalent to the drug prescribed by brand name;

62 (c) has the same active ingredient or ingredients of the same strength, quantity, and

63 form of dosage as the drug prescribed by brand name; and

64 (d) is of the same generic type as the drug prescribed by brand name.

65 (7) If the pharmacist has available to him more than one drug that may be substituted

66 for the drug prescribed by brand name, the pharmacist shall dispense, in substitution, the least

67 expensive of the drugs that are available to him for substitution.

68 (8) Before a pharmacist dispenses a drug in substitution for a drug prescribed by brand  
69 name, the pharmacist shall:

70 (a) advise the person who presents the prescription that the pharmacist intends to

71 dispense a drug in substitution; and

72 (b) advise the person that he may refuse to accept the drug that the pharmacist intends

73 to dispense in substitution, unless the pharmacist is being paid for the drug by a governmental

74 agency, in which case the pharmacist shall dispense the drug as provided in Subsection (4).

75 (9) If a person refuses to accept the drug that the pharmacist intends to dispense in

76 substitution, the pharmacist shall dispense the drug prescribed by brand name, unless the

77 pharmacist is being paid for the drug by a governmental agency, in which case the pharmacist

78 shall dispense the drug as provided in Subsection (4).

79 (10) A pharmacist shall not dispense a drug in substitution for a drug prescribed by

80 brand name if the practitioner has indicated that a substitution is prohibited using one or more

81 of the following methods:

82 (a) by oral communication to the pharmacist; or

83 (b) by including the handwritten words "Dispense as Written" on a prescription that is

84 given to the pharmacist, or in the case of an electronically transmitted prescription, including

85 faxed prescriptions, the practitioner expressly indicates to the pharmacist that the brand name

86 drug prescribed is medically necessary by indicating "Dispense as Written."

87 (11) The provisions of this section also apply to a prescription issued to a person by a

88 practitioner from outside this state if the practitioner has not indicated, by a method set forth in

89 Subsection (10), that a substitution is prohibited or the practitioner has indicated that a specific

90 alternative product is medically necessary.

91 (12) The provisions of this section do not apply to:

92 (a) a prescription drug that is dispensed to any inpatient of a hospital by an inpatient  
93 pharmacy which is associated with that hospital;

94 (b) a prescription drug that is dispensed to any person by mail order or other common  
95 carrier by an Internet pharmacy which is authorized to provide service by mail order or other  
96 common carrier pursuant to the provisions of this chapter; or

97 (c) a prescription drug that is dispensed to any person by a pharmacist if the  
98 substitution:

99 (i) would violate the terms of a health care plan that maintains a mandatory, exclusive,  
100 or closed formulary for its coverage for prescription drugs; or

101 (ii) would otherwise make the transaction ineligible for reimbursement by a third party.

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**Legislative Review Note**

**as of 12-23-03 9:34 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

This bill would weaken the Medicaid "demonstration" requirement costing the state \$3,532,700 in General Fund and \$9,102,900 in Federal Funds.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$3,532,700	\$3,532,700	\$0	\$0
Federal Funds	\$9,102,200	\$9,102,200	\$0	\$0
<b>TOTAL</b>	<b>\$12,634,900</b>	<b>\$12,634,900</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

There is no reliable estimate of impacts to individuals or businesses.

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