CHAPTER 24

Drug Product Selection Act

**SECTION 39‑24‑10.** Short title.

This chapter shall be known and may be cited as the “Drug Product Selection Act of 1978”.

HISTORY: 1978 Act No. 595 Section 1.

CROSS REFERENCES

Prescriptions generally, see Section 44‑53‑360.

Attorney General’s Opinions

Drug Product Selection Act of 1978 (Act No. 595) does not apply to institutional dispensing of drugs in hospitals and nursing homes. 1979 Op Atty Gen, No 79‑58, p 76.

**SECTION 39‑24‑20.** Definitions.

As used in this chapter:

(1) “Brand name” means the proprietary or trade name placed upon a drug, its container, label or wrapping at the time of packaging;

(2) “Generic name” means the United States Adopted Name (USAN) or the official title of a drug published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) “Substitute” means to dispense, with the practitioner’s authorization, a “therapeutically equivalent” generic drug product of identical drug salt or an interchangeable biological product in place of the drug or biological product ordered or prescribed;

(4) “Therapeutically equivalent” means the same efficacy and toxicity when administered to an individual in the same dosage form; and

(5) “Practitioner” means a physician, osteopath, dentist, podiatrist, veterinarian, or any other person authorized to prescribe drugs under the laws of this State.

HISTORY: 1978 Act No. 595 Section 2; 2017 Act No. 11 (H.3438), Section 1, eff April 24, 2017.

Effect of Amendment

2017 Act No. 11, Section 1, in (3), inserted “or an interchangeable biological product” and “or biological product”.

**SECTION 39‑24‑30.** Substitution of equivalent drug product authorized; substitution of interchangeable biological product authorized.

(A) As provided in Section 39‑24‑40, upon receiving a prescription for a brand name product, a registered pharmacist may substitute a drug product of the same dosage form and strength which, in his professional judgment, is a therapeutically equivalent drug product.

(B) As provided in Section 39‑24‑40, upon receiving a prescription for a specific biological product, a registered pharmacist may substitute an interchangeable biological product.

HISTORY: 1978 Act No. 595 Section 3; 2017 Act No. 11 (H.3438), Section 2, eff April 24, 2017.

Effect of Amendment

2017 Act No. 11, Section 2, inserted paragraph designator (A), and added (B), relating to the substitution of interchangeable biological products.

**SECTION 39‑24‑40.** Prescription shall state whether substitution proper; form; consent of patient.

(A) An oral or written drug prescription must provide an authorization from the practitioner as to whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted.

(B) A written prescription must have two signature lines at opposite ends on the bottom of the form. Under the line at the left side must be clearly printed the words “DISPENSE AS WRITTEN”. Under the line at the right side shall be clearly printed the words “SUBSTITUTION PERMITTED”, unless the prescription is to be paid for with Medicaid funds. The practitioner shall communicate the instructions to the pharmacist by signing on the appropriate line. A written prescription is not valid without the signature of the practitioner on one of these lines.

(C) An oral prescription from the practitioner must instruct the pharmacist as to whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless the prescription is to be paid for with Medicaid funds. The pharmacist shall note the instructions on the file copy of the prescription and retain the prescription form for the period as prescribed by law.

(D) The pharmacist shall note the brand name or the manufacturer of the substituted drug or biological product dispensed on the file copy of a written or oral prescription or record this information electronically, or both.

(E) Substitution may not occur unless the pharmacist advises the patient that the practitioner has authorized substitution and the patient consents.

(F) If a pharmacist substitutes a generic drug for a name brand prescribed drug when dispensing a prescribed medication, the brand name and the name of the generic drug and its manufacturer, with an explanation of “generic for” or similar language to indicate substitution has occurred, must appear on the prescription label and be affixed to the container or an auxiliary label, unless the prescribing practitioner indicated that the name of the drug may not appear upon the prescription label.

(G) If a pharmacist substitutes an interchangeable biological product for a specific biological product prescribed when dispensing a prescribed medication, the brand name and the name of the interchangeable biological product and its manufacturer, with an explanation of “interchangeable with” or similar language, to indicate substitution has occurred, must appear on the prescription label and be affixed to the container or an auxiliary label unless the prescribing practitioner indicated that the name of the biological product may not appear on the prescription label.

HISTORY: 1978 Act No. 595 Section 4; 1994 Act No. 416, Section 1, eff May 24, 1994; 2002 Act No. 314, Section 1, eff July 1, 2002; 2017 Act No. 11 (H.3438), Section 3, eff April 24, 2017.

Effect of Amendment

The 1994 amendment added the sixth paragraph, providing that if a pharmacist substitutes a generic drug for a name brand prescribed drug the generic drug must be listed first followed by the words “substituted for” and the name brand or this information must be affixed to the container.

The 2002 amendment designated the subsections; in subsection (A), substituted “An” for “Every”, and “must” for “shall”; in subsection (B), substituted “must” for “shall”, “the words ‘SUBSTITUTION PERMITTED’, unless the prescription is to be paid for with medicaid funds” for “the words ‘SUBSTITUTION PERMITTED’”, “A written prescription” for “No written prescription”, and “is not” for “shall be”; in subsection (C), substituted “must” for “shall”, and inserted “unless the prescription is to be paid for with medicaid funds”; rewrote subsections (D) and (F); and in subsection (E), substituted “may” for “shall”.

2017 Act No. 11, Section 3, in (A) and (C), inserted “or interchangeable biological product”; in (D), inserted “or biological product”; and added (G), relating to prescription requirements to substitute interchangeable biological products.

CROSS REFERENCES

Prescriptions generally, see Section 44‑53‑360.

Substitution of equivalent drug product and interchangeable biological product authorized, see Section 39‑24‑30.

**SECTION 39‑24‑50.** Retroactive effect.

No provisions of this chapter shall apply to, nor be construed to invalidate, prescriptions issued prior to the effective date of this chapter; provided, that an oral authorization for substitution may be obtained from the prescribing practitioner by the pharmacist on any prescription issued prior to the effective date of this chapter.

HISTORY: 1978 Act No. 595 Section 4A.

**SECTION 39‑24‑60.** Out of state and United States Government prescriptions.

This chapter shall not be construed to prevent registered pharmacists from filling, as otherwise provided by law, prescriptions originating outside the boundaries of this State and official United States Government prescriptions issued by authorized governmental officials.

HISTORY: 1978 Act No. 595 Section 5.