State of Arkansas *As Engrossed: H2/18/19 H2/20/19*
92nd General Assembly **A Bill**
Regular Session, 2019 HOUSE BILL 1269

By: Representative Magie

For An Act To Be Entitled

AN ACT TO ALLOW PHARMACISTS TO MAKE BIOLOGICAL PRODUCT SUBSTITUTIONS; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW PHARMACISTS TO MAKE BIOLOGICAL PRODUCT SUBSTITUTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 17-92-101, concerning the definitions relating to pharmacists, pharmacies, and the practice of pharmacy, is amended to add new subdivisions to read as follows:

(25) "Biological product" means a biological product as defined by 42 U.S.C. 262(i)(1), as existing on January 1, 2019; and

(26) "Interchangeable biological product" means a biological product that is interchangeable as defined by 42 U.S.C. 262(i)(3), as existing on January 1, 2019.

SECTION 2. Arkansas Code § 17-92-503 is amended to read as follows:

17-92-503. Generic drug product and biological product substitutions.

(a)(1)(A) Except as provided in subsection (b) of this section, when a pharmacist receives a prescription for a brand or trade name drug product or biological product, the pharmacist may dispense a ~~lower cost~~ generically equivalent drug product or interchangeable biological product only when there will be a cost savings for the patient.

(B) The pharmacist shall disclose the amount of the cost savings at the request of the patient.

(2) The total amount charged for the substituted generically equivalent drug product or interchangeable biological product or for dispensing the drug product or biological product shall not exceed the amount normally and regularly charged under comparable circumstances by the pharmacist for that drug product or biological product or for the dispensing of that drug product or biological product.

(3) A pharmacist may not dispense a drug product or interchangeable biological product with a total charge that exceeds the total charge of the drug product or biological product originally prescribed unless agreed to by the purchaser.

(b) The pharmacist shall not dispense a generically equivalent drug product or interchangeable biological product under subsection (a) of this section if:

(1) The prescriber, in the case of a prescription in writing signed by the prescriber, indicates in his or her own handwriting by name or initial that no substitution shall be made;

(2) The prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates that the prescription is to be dispensed as communicated;

(3) The person for whom the drug product or biological product is prescribed indicates that the prescription is to be dispensed as written or communicated; or

(4) The Arkansas State Board of Pharmacy has determined that the drug product or biological product should not be substituted and has notified all pharmacists of that determination.

(c)(1) The Arkansas State Board of Pharmacy shall determine which drugs are generically equivalent and which biological products are interchangeable biological products as defined in § 17-92-101, relying on standards scientifically supported and generally accepted in the field of pharmacy, and shall notify each licensed pharmacist and the Arkansas State Medical Board of this determination.

(2) In making this determination, the Arkansas State Board of Pharmacy may use a nationally recognized reference source that meets the requirements of this act, notifying each licensed pharmacist and the Arkansas State Medical Board of the reference source to be used and any additions or deletions the Arkansas State Board of Pharmacy may make in its discretion.

(d)(1) Within five (5) business days after dispensing an interchangeable biological product that has been substituted for a biological product, the dispensing pharmacist or his or her designee shall record the specific interchangeable biological product provided to the patient, including without limitation the name of the interchangeable biological product and the manufacturer of the interchangeable biological product.

(2) The record shall be electronically accessible to the prescriber through:

(A) An interoperable electronic medical records system;

(B) An electronic prescribing technology;

(C) A pharmacy benefit management system; or

(D) A pharmacy record.

(3) If requested by a prescriber, a pharmacist shall communicate to the prescriber within five (5) business days using facsimile, telephone, electronic transmission, or other prevailing means that an interchangeable biological product has been dispensed.

(4) A communication is not required when:

(A) An interchangeable biological product does not exist for the prescribed biological product; or

(B) A refill prescription for a biological product is not substituted with an interchangeable biological product on a subsequent filling of the prescription.

(5) The pharmacist or pharmacy shall maintain a record of *biological products dispensed for at least two (2) years.*

(6) Under subdivision (d)(2) of this section, the dispensing pharmacist or prescriber is not:

(A) Required to show proof that a prescriber has access to the record in any type of payment audit conducted by a payer or pharmacy benefit manager; or

(B) Subject to disciplinary action or civil penalties for failure to ensure that the record is accessible or for failure to access the record.

SECTION 3. Arkansas Code § 17-92-505 is amended to read as follows:

17-92-505. Labeling.

(a)(1) The pharmacist filling a prescription for dispensing to an

ultimate patient may affix to the container a label showing:

(A) The pharmacy name, address, and telephone number;

(B) The date of dispensing;

(C) The serial number of the prescription;

(D) The name of the patient;

(E) The name of the prescribing practitioner;

(F) Either:

(i) The trade name of the ~~medication~~ drug product, if any, or the generic name and identity of the manufacturer of the dispensed ~~medication~~ drug product, if the ~~medication~~ drug product appears generically listed on the drug formulary list as established by this subchapter; or

(ii) In the case of a biological product, the trade name of the biological product, if any, or the proper name of the biological product and identity of the manufacturer of the dispensed biological product;

(G) The strength per unit dose of the medication;

(H) The quantity of the medication; and

(I) Directions for use.

(2) If a pharmacist dispenses a generically equivalent product or interchangeable biological product, the person for whom the medication is prescribed shall be informed ~~prior to~~ before dispensing or the label should appropriately indicate the substitution.

(3) ~~However, this subsection shall~~ This subsection does not apply to the dispensing of medication to inpatients in hospitals.

(4) ~~Further, in an appropriate manner,~~ In the case of dispensing a drug product or biological product, the prescribing practitioner may indicate that the name, manufacturer, and strength of the medication dispensed shall be deleted from the label.

(b) ~~Any authorized person filling a prescription~~ An authorized person who fills a prescription for dispensing to an ultimate patient shall affix to the container a label showing:

(1) ~~the~~ The trade name of the medication or the generic name of the medication unless directed to the contrary by the ~~physician. Failure to comply with this subsection shall be grounds for disciplinary action.~~ prescribing practitioner; or

(2) The trade name, if any, or the proper name of the biological product unless directed to the contrary by the prescribing practitioner.

SECTION 4. Arkansas Code § 17-92-506 is amended to read as follows:

17-92-506. ~~Price~~ Available drug product and biological product lists.

(a)(1) A pharmacist may display, within the confines of the pharmacy, lists of available drug products and biological products, other than controlled substances, and current charges for the drug products or biological products or for the dispensing of the drug products or biological products in specified quantities.

(2) Upon request, a pharmacy may make such lists available to its customers and other members of the public.

(b) The Arkansas State Board of Pharmacy shall maintain on the website of the board a link to the lists of all interchangeable biological products approved by the United States Food and Drug Administration.

/s/Magie