

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0582.03 Kristen Forrestal

HOUSE BILL 10-1145

HOUSE SPONSORSHIP

Kagan,

SENATE SPONSORSHIP

(None),

House Committees
Health and Human Services

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE USE OF GENERIC PRESCRIPTION DRUGS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires a health care practitioner who finds it to be in the best interest of a patient to not allow the substitution of an equivalent generic drug for the one actually prescribed to indicate on the prescription the words "brand medically necessary" or to initial a preprinted box labeled "brand medically necessary". Current law requires the words or the preprinted box to read "dispense as written".

The bill also makes it an unlawful act for a pharmacist to accept

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

a coupon for a prescription drug for which there is a generic alternative if the practitioner has not indicated that the brand name drug is medically necessary and the drug is paid for, in whole or in part, by an insurance carrier.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 12-22-124 (2), Colorado Revised Statutes, is
3 amended to read:

4 **12-22-124. Substitution of prescribed drugs authorized - when**
5 **- conditions.** (2) If, in the opinion of the practitioner, it is in the best
6 interest of ~~his~~ THE PRACTITIONER'S patient that an equivalent drug not be
7 substituted, ~~he~~ THE PRACTITIONER may so indicate on the prescription by
8 either writing the words "~~dispense as written~~" "BRAND MEDICALLY
9 NECESSARY" or by initialing in his OR HER own handwriting a preprinted
10 box labeled "~~dispense as written~~" "BRAND MEDICALLY NECESSARY". In
11 no case shall a facsimile of the handwritten signature or the handwritten
12 initials of a practitioner be preprinted to indicate "~~dispense as written~~"
13 "BRAND MEDICALLY NECESSARY". If the prescription is communicated
14 orally by the practitioner to the pharmacist, the practitioner may indicate
15 the prohibition on substitution in the same manner and at the same time.

16 **SECTION 2.** Part 1 of article 22 of title 12, Colorado Revised
17 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
18 read:

19 **12-22-126.5. Unlawful act by pharmacist.** (1) IT IS UNLAWFUL
20 FOR A PHARMACIST TO ACCEPT A VOUCHER, COUPON, OR OTHER FORM OF
21 DISCOUNT FOR A PRESCRIPTION DRUG FOR WHICH THERE IS AN EQUIVALENT
22 GENERIC DRUG TYPE IF:

23 (a) THE PRACTITIONER HAS NOT INDICATED THAT A SUBSTITUTE

1 DRUG IS PROHIBITED PURSUANT TO SECTION 12-22-124 (2); AND

2 (b) THE PAYMENT FOR THE PRESCRIPTION DRUG IS OR MAY BE
3 MADE, IN WHOLE OR IN PART, BY A HEALTH INSURANCE CARRIER.

4 (2) A VIOLATION OF THIS SECTION IS NOT AN UNLAWFUL ACT FOR
5 WHICH THE PENALTIES IN SECTION 12-22-127 APPLY.

6 **SECTION 3. Act subject to petition - effective date.** (1) This
7 act shall take effect at 12:01 a.m. on the day following the expiration of
8 the ninety-day period after final adjournment of the general assembly
9 (August 11, 2010, if adjournment sine die is on May 12, 2010); except
10 that, section 1 of this act shall take effect July 1, 2011.

11 (2) However, if a referendum petition is filed pursuant to section
12 1 (3) of article V of the state constitution against this act or an item,
13 section, or part of this act within such period, then the act, item, section,
14 or part shall not take effect unless approved by the people at the general
15 election to be held in November 2010 and shall take effect on the date of
16 the official declaration of the vote thereon by the governor.