

SUBSTITUTE FOR
HOUSE BILL NO. 4812

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 17702, 17704, and 17755 (MCL 333.17702,
333.17704, and 333.17755), sections 17702 and 17704 as amended by
2014 PA 280.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17702. (1) "Agent" means an individual designated by a
2 prescriber to act on behalf of or at the discretion of that
3 prescriber as provided in section 17744.

4 (2) **"BIOLOGICAL DRUG PRODUCT" MEANS A BIOLOGICAL PRODUCT AS**
5 **DEFINED IN 42 USC 262.**

6 (3) **"BIOSIMILAR" MEANS THAT TERM AS DEFINED IN 42 USC 262.**

7 (4) ~~(2)~~—"Brand name" means the registered trademark name given
8 to a drug product by its manufacturer.

9 (5) ~~(3)~~—Except as otherwise provided in subsection ~~(4)~~, ~~(6)~~,

1 "compounding" means the preparation, mixing, assembling, packaging,
2 and labeling of a drug or device by a pharmacist under the
3 following circumstances:

4 (a) Upon the receipt of a prescription for a specific patient.

5 (b) Upon the receipt of a medical or dental order from a
6 prescriber or agent for use in the treatment of patients within the
7 course of the prescriber's professional practice.

8 (c) In anticipation of the receipt of a prescription or
9 medical or dental order based on routine, regularly observed
10 prescription or medical or dental order patterns.

11 (d) For the purpose of or incidental to research, teaching, or
12 chemical analysis and not for the purpose of sale or dispensing.

13 (6) ~~(4)~~—"Compounding" does not include any of the following:

14 (a) Except as provided in section 17748c, the compounding of a
15 drug product that is essentially a copy of a commercially available
16 product.

17 (b) The reconstitution, mixing, or other similar act that is
18 performed pursuant to the directions contained in approved labeling
19 provided by the manufacturer of a commercially available product.

20 (c) The compounding of allergenic extracts or biologic
21 products.

22 (7) ~~(5)~~—"Compounding pharmacy" means a pharmacy that is
23 licensed under this part and is authorized to offer compounding
24 services under sections 17748, 17748a, and 17748b.

25 (8) ~~(6)~~—"Current selling price" means the retail price for a
26 prescription drug that is available for sale from a pharmacy.

27 Sec. 17704. (1) "Federal act" means the federal food, drug,

1 and cosmetic act, 21 USC 301 to 399f.

2 (2) "Food and ~~drug administration~~" **DRUG ADMINISTRATION** or
3 "FDA" means the United States ~~food and drug administration~~. **FOOD AND**
4 **DRUG ADMINISTRATION.**

5 (3) "Generic name" means the established or official name of a
6 drug or drug product.

7 (4) "Harmful drug" means a drug intended for use by human
8 beings that is harmful because of its toxicity, habit-forming
9 nature, or other potential adverse effect; the method of its use;
10 or the collateral measures necessary to its safe and effective use
11 and that is designated as harmful by a rule promulgated under this
12 part.

13 (5) **"INTERCHANGEABLE BIOLOGICAL DRUG PRODUCT" MEANS EITHER OF**
14 **THE FOLLOWING:**

15 (A) **A BIOLOGICAL DRUG PRODUCT THAT IS LICENSED BY THE FDA AND**
16 **DETERMINED TO BE INTERCHANGEABLE WITH THE PRESCRIBED DRUG PRODUCT**
17 **PURSUANT TO 42 USC 262(K)(4).**

18 (B) **A BIOLOGICAL DRUG PRODUCT THAT IS APPROVED BY THE FDA**
19 **PURSUANT TO AN APPLICATION FILED UNDER 21 USC 355(B)(2) AND THAT**
20 **THE FDA HAS DETERMINED TO BE THERAPEUTICALLY EQUIVALENT TO THE**
21 **PRESCRIBED DRUG PRODUCT.**

22 (6) ~~(5)~~ "Internship" means an educational program of
23 professional and practical experience for an intern.

24 Sec. 17755. (1) ~~When~~ **EXCEPT AS PROVIDED IN SUBSECTION (3),**
25 **WHEN** a pharmacist receives a prescription for a brand name drug
26 **product OR BIOLOGICAL DRUG PRODUCT,** the pharmacist may, or when a
27 purchaser requests a lower cost generically equivalent drug product

1 **OR INTERCHANGEABLE BIOLOGICAL DRUG PRODUCT**, the pharmacist shall
2 dispense a lower cost but not higher cost generically equivalent
3 drug product **OR INTERCHANGEABLE BIOLOGICAL DRUG PRODUCT** if
4 available in the pharmacy. ~~except as provided in subsection (3).~~
5 If a drug **OR BIOLOGICAL DRUG PRODUCT** is dispensed ~~which~~**THAT** is not
6 the prescribed brand, the purchaser shall be notified and the
7 prescription label shall indicate both the name of the brand
8 prescribed and the name of the brand dispensed and designate each
9 respectively. ~~If~~**EXCEPT AS OTHERWISE PROVIDED IN SECTION 17756, IF**
10 the dispensed drug **OR BIOLOGICAL DRUG PRODUCT** does not have a brand
11 name, the prescription label shall indicate the generic name of the
12 drug **OR BIOLOGICAL DRUG PRODUCT** dispensed. ~~except as otherwise~~
13 ~~provided in section 17756.~~

14 (2) If a pharmacist dispenses a generically equivalent drug
15 product **OR INTERCHANGEABLE BIOLOGICAL DRUG PRODUCT**, the pharmacist
16 shall pass on the savings in cost to the purchaser or to the third
17 party payment source if the prescription purchase is covered by a
18 third party pay contract. The savings in cost is the difference
19 between the wholesale cost to the pharmacist of the 2 drug
20 products.

21 (3) The pharmacist shall not dispense a generically equivalent
22 drug product **OR INTERCHANGEABLE BIOLOGICAL DRUG PRODUCT** under
23 subsection (1) if any of the following ~~applies~~**APPLY:**

24 (a) The prescriber, in the case of a prescription in writing
25 signed by the prescriber, writes in his or her own handwriting
26 "dispense as written" or "d.a.w." on the prescription.

27 (b) The prescriber, having preprinted on his or her

1 prescription blanks the statement "another brand of a generically
2 equivalent product, identical in dosage, form, and content of
3 active ingredients, may be dispensed unless initialed d.a.w.",
4 writes in his or her own handwriting —the initials "d.a.w." in a
5 space, box, or square adjacent to the statement.

6 (c) The prescriber, in the case of a prescription other than
7 one in writing signed by the prescriber, expressly indicates **THAT**
8 the prescription is to be dispensed as communicated.

9 (4) A pharmacist may not dispense a drug product with a total
10 charge that exceeds the total charge of the drug product originally
11 prescribed, unless agreed to by the purchaser.

12 (5) **EXCEPT AS PROVIDED IN SUBSECTION (6), WITHIN 5 BUSINESS**
13 **DAYS AFTER DISPENSING A BIOLOGICAL DRUG PRODUCT, THE PHARMACIST WHO**
14 **DISPENSED THE BIOLOGICAL DRUG PRODUCT, A PHARMACY TECHNICIAN, OR A**
15 **PHARMACIST INTERN SHALL COMMUNICATE TO THE PRESCRIBER THE SPECIFIC**
16 **BIOLOGICAL DRUG PRODUCT DISPENSED, INCLUDING, BUT NOT LIMITED TO,**
17 **THE NAME OF THE BIOLOGICAL DRUG PRODUCT AND THE MANUFACTURER OF THE**
18 **BIOLOGICAL DRUG PRODUCT. THE COMMUNICATION REQUIRED UNDER THIS**
19 **SUBSECTION SHALL BE MADE AS FOLLOWS:**

20 (A) **BY MAKING AN ENTRY IN AN INTEROPERABLE ELECTRONIC MEDICAL**
21 **RECORDS SYSTEM, THROUGH THE USE OF ELECTRONIC PRESCRIBING**
22 **TECHNOLOGY, THROUGH THE USE OF A PHARMACY BENEFITS MANAGEMENT**
23 **SYSTEM, OR THROUGH THE USE OF A PHARMACY RECORD, THAT IS**
24 **ELECTRONICALLY ACCESSIBLE BY THE PRESCRIBER.**

25 (B) **IF THE METHODS DESCRIBED IN SUBDIVISION (A) ARE NOT**
26 **AVAILABLE, THEN BY FACSIMILE, TELEPHONE, ELECTRONIC TRANSMISSION,**
27 **OR OTHER PREVAILING MEANS. THE INFORMATION RECEIVED BY A PRESCRIBER**

1 UNDER THIS SUBDIVISION MUST BE INCLUDED IN THE PATIENT'S MEDICAL
2 RECORD.

3 (6) SUBSECTION (5) DOES NOT APPLY IF EITHER OF THE FOLLOWING
4 OCCURS:

5 (A) THERE IS NO INTERCHANGEABLE BIOLOGICAL DRUG PRODUCT FOR
6 THE DRUG PRODUCT PRESCRIBED.

7 (B) THE PRESCRIPTION WAS REFILLED WITH THE SAME DRUG PRODUCT
8 THAT WAS DISPENSED ON THE PRIOR FILLING OF THE PRESCRIPTION.

9 (7) THE BOARD SHALL MAINTAIN A LINK ON ITS WEBSITE TO THE
10 CURRENT LIST OF ALL BIOLOGICAL DRUG PRODUCTS THAT THE FDA HAS
11 DETERMINED TO BE INTERCHANGEABLE BIOLOGICAL DRUG PRODUCTS.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.