

1 ENGROSSED HOUSE
2 BILL NO. 3791

By: Marti, Davis and Virgin of
the House

3 and

4 Standridge of the Senate
5

6 An Act relating to pharmacy; defining terms;
7 providing the substitution of an interchangeable
8 biological product for a prescribed biological
9 product under certain conditions; requiring
10 electronic notice of substitution; providing that
11 dispensing pharmacist shall not be required to show
12 certain proof of access; providing exceptions;
13 directing State Board of Pharmacy to maintain link of
14 all interchangeable biological products; providing
15 for approved brand and generic substitutions;
16 providing for codification; and providing an
17 effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 353.18B of Title 59, unless
21 there is created a duplication in numbering, reads as follows:

22 A. As used in this section:

23 1. "Biological product" has the same meaning given to that term
24 in 42 U.S.C., Section 262; and

2. "Interchangeable biological product" means a biological
product that the United States Food and Drug Administration (USFDA):

1 a. has licensed and determined to meet the standards for
2 interchangeability pursuant to 42 U.S.C., Section
3 262(k)(4) of the Internal Revenue Code, or

4 b. has determined is therapeutically equivalent as set
5 forth in the latest edition of or supplement to the
6 USFDA's Approved Drug Products with Therapeutic
7 Equivalence Evaluations, commonly known as the Orange
8 Book.

9 B. A pharmacist may substitute an interchangeable biological
10 product for a prescribed biological product only if all of the
11 following conditions are met:

12 1. The substituted product has been determined by the USFDA to
13 be interchangeable, as defined in subsection A of this section, with
14 the prescribed biological product;

15 2. The prescribing physician has permitted substitution; and

16 3. The pharmacy informs the patient of the substitution.

17 C. Within five (5) business days following the dispensing of a
18 biological product, the dispensing pharmacist or the pharmacist's
19 designee shall make an entry of the specific product provided to the
20 patient, including the name of the product and the manufacturer.
21 The communication shall be conveyed by making an entry that can be
22 electronically accessed by the prescriber through:

23 1. An interoperable electronic medical records system;

24 2. An electronic prescribing technology;

1 3. A pharmacy benefit management system; or

2 4. A pharmacy record.

3 D. The dispensing pharmacist or a prescriber shall not be:

4 1. Required to show proof that the prescriber has access to the
5 record in any type of payment audit conducted by a payer or pharmacy
6 benefit manager; or

7 2. Subject to disciplinary action or civil penalties for
8 failure to ensure that the record is accessible or for failure to
9 access the record.

10 E. Entry into an electronic records system as described in
11 subsection C of this section is presumed to provide notice to the
12 prescriber. Otherwise, the pharmacist shall communicate the
13 biological product dispensed to the prescriber using facsimile,
14 telephone, electronic transmission or other prevailing means, except
15 that communication shall not be required when:

16 1. There is no USFDA-approved interchangeable biological
17 product for the product prescribed; or

18 2. A refill prescription is not changed from the product
19 dispensed on the prior filling of the prescription.

20 F. The State Board of Pharmacy shall maintain a link on its
21 Internet website to the current list of all biological products
22 determined by the USFDA to be interchangeable with a specific
23 biological product.

1 G. Nothing in this section shall preclude existing approved
2 brand and generic substitutions.

3 SECTION 2. This act shall become effective November 1, 2020.

4 Passed the House of Representatives the 3rd day of March, 2020.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2020.

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Presiding Officer of the Senate

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