

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 559

An Act to amend the Code of Virginia by adding a section numbered 65.2-603.1, relating to the use of therapeutically equivalent drug products by workers' compensation claimants.

[S 1158]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 65.2-603.1 as follows:

§ 65.2-603.1. Use of therapeutically equivalent drug products required.

A. As used in this section, "therapeutically equivalent drug products" means drug products that (i) contain the same active ingredients, (ii) are identical in strength or concentration, dosage form, and route of administration, and (iii) are classified as being therapeutically equivalent by the U.S. Food and Drug Administration pursuant to the definition of "therapeutically equivalent drug products" set forth in the most recent edition of Approved Drug Products with Therapeutic Equivalence Evaluations, known as the Orange Book.

B. Notwithstanding the provisions of § 54.1-3408.03, and except as provided in subsection C, any pharmacist filling a prescription for medication for a workers' compensation claimant shall dispense a therapeutically equivalent drug product for the prescribed name-brand drug product. If a therapeutically equivalent drug product does not exist or the usual and customary retail price charged by the pharmacist for the therapeutically equivalent drug product is higher than that of the prescribed name-brand drug product, the pharmacist shall dispense the prescribed name-brand drug product.

C. A prescriber may specify on the prescription "brand medically necessary" if there is a medical reason why the claimant should not have the prescription filled with a therapeutically equivalent drug product. A request by the claimant that a name-brand drug product be prescribed shall not constitute a sufficient reason under this section for the prescriber to specify "brand medically necessary" on the prescription. If the prescriber specifies on the prescription "brand medically necessary," the pharmacist shall fill the prescription with the name-brand drug product prescribed. If the prescriber calls the prescription in to the pharmacy by telephone and verbally tells the pharmacist "brand medically necessary," the pharmacist shall note on the prescription that the prescriber stated "brand medically necessary" and then fill the prescription with the name-brand drug product prescribed. The cost of any medication prescribed by any authorized treating physician and covered pursuant to this section to treat injuries or diseases that result from a compensable claim shall not be the responsibility of the claimant unless the claimant obtained the prescription through fraud.

D. An act in compliance with the provisions of this section shall not be deemed to be a prohibited act under § 54.1-3457.