

House Bill 367

By: Representatives Carter of the 159<sup>th</sup>, Stephens of the 164<sup>th</sup>, Parrish of the 156<sup>th</sup>, Parham of the 141<sup>st</sup>, and Jerguson of the 22<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated,  
2 relating to prescription drugs, so as to eliminate redundant language relating to what  
3 constitutes the practice of medicine; to provide for the substitution of therapeutically  
4 equivalent drugs; to provide for requirements for therapeutically equivalent substitutions; to  
5 provide that a substitution shall not constitute the practice of medicine; to amend Article 1  
6 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance  
7 generally, so as to define certain terms; to provide for health insurance coverage for  
8 therapeutically equivalent substitutions under certain circumstances; to provide for statutory  
9 construction; to provide for enforcement by the Commissioner of Insurance; to provide for  
10 related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 5 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to  
14 prescription drugs, is amended by revising Code Section 26-4-81, relating to substitution of  
15 generic drugs for brand name drugs, as follows:

16 "26-4-81.

17 (a) In accordance with this Code section, a pharmacist may substitute a drug with the same  
18 generic name in the same strength, quantity, dose, and dosage form as the prescribed brand  
19 name drug product which is, in the pharmacist's reasonable professional opinion,  
20 pharmaceutically equivalent.

21 (b) If a practitioner of the healing arts prescribes a drug by its generic name, the  
22 pharmacist shall dispense the lowest retail priced drug product which is in stock and which  
23 is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent.

24 (c) Substitutions as provided for in subsections (a) and (b) of this Code section are  
25 authorized for the express purpose of making available to the consumer the lowest retail

1 priced drug product which is in stock and which is, in the pharmacist's reasonable  
2 professional opinion, both therapeutically equivalent and pharmaceutically equivalent.

3 (d) Whenever a substitution is made, the pharmacist shall record on the original  
4 prescription the fact that there has been a substitution and the identity of the dispensed drug  
5 product and its manufacturer. Such prescription shall be made available for inspection by  
6 the board or its representative in accordance with the rules of the board.

7 (e) The substitution of any drug by a registered pharmacist pursuant to this Code section  
8 does not constitute the practice of medicine.

9 (f) A patient for whom a prescription drug order is intended may instruct a pharmacist not  
10 to substitute a generic name drug in lieu of a brand name drug.

11 (g) A practitioner of the healing arts may instruct the pharmacist not to substitute a generic  
12 name drug in lieu of a brand name drug by including the words 'brand necessary' in the  
13 body of the prescription. When a prescription is a hard copy prescription drug order, such  
14 indication of brand necessary must be in the practitioner's own handwriting and shall not  
15 be printed, applied by rubber stamp, or any such similar means.

16 ~~(h) The substitution of any drug by a registered pharmacist pursuant to this Code section  
17 does not constitute the practice of medicine."~~

## 18 SECTION 2.

19 Said article is further amended by inserting a new Code section to read as follows:

20 "26-4-81.1

21 (a) In accordance with this Code section, a pharmacist may select a therapeutically  
22 equivalent drug from the patient's health benefit provider's pharmacy and therapeutics  
23 committee list of drugs for the specifically prescribed drug for purposes of formulary  
24 adherence to the patient's insurance company, carrier, or similar third-party payor plan.

25 (b) If a practitioner of the healing arts prescribes a drug but has indicated with his or her  
26 personal signature on the prescription that a therapeutically equivalent drug may be  
27 selected from the patient's health benefit provider's pharmacy and therapeutics committee  
28 list of drugs for the specifically prescribed drug for purposes of formulary adherence to the  
29 patient's insurance company, carrier, or similar third-party payor plan, the pharmacist may  
30 select a therapeutically equivalent drug and dispense it to the patient. The board shall be  
31 authorized to promulgate regulations to establish requirements for prescription drug order  
32 forms to clearly provide for such indication.

33 (c) The pharmacist shall, within 72 hours of dispensing a therapeutically equivalent drug  
34 selected from the patient's health provider's pharmacy and therapeutics committee list of  
35 drugs for the specifically prescribed drug for purposes of formulary adherence to the  
36 patient's insurance company, carrier, or similar third-party payor plan, notify the ordering

1 practitioner of the selection and the name of the therapeutically equivalent drug dispensed.  
 2 Further, the pharmacist shall, whenever a selection is made pursuant to this Code section,  
 3 record on the original prescription the fact that there has been a therapeutically equivalent  
 4 selection made and the identity of the dispensed drug product and its manufacturer. Such  
 5 prescription shall be made available for inspection by the board or its representative in  
 6 accordance with the rules of the board. The pharmacist shall also notify and document for  
 7 the patient at the time of dispensing that such selection of an alternate drug has taken place.

8 (d) Substitutions made pursuant to this Code section are authorized for the express purpose  
 9 of dispensing drugs that are included in the approved formulary of the pharmacy and  
 10 therapeutics committee of the patient's insurance company, carrier, or similar third-party  
 11 payor plan.

12 (e) The substitution of any drug by a registered pharmacist pursuant to this Code section  
 13 does not constitute the practice of medicine."

### 14 SECTION 3.

15 Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to  
 16 insurance generally, is amended by inserting a new Code section to read as follows:

17 "33-24-59.13.

18 (a) As used in this Code section, the term:

19 (1) 'Health benefit policy' means any individual or group plan, policy, or contract for  
 20 health care services issued, delivered, issued for delivery, or renewed in this state by an  
 21 insurance provider, including, but not limited to, those policies, plans, or contracts  
 22 executed by the State of Georgia on behalf of state employees under Article 1 of Chapter  
 23 18 of Title 45.

24 (2) 'Insurance provider' means an insurance company, carrier, or similar third-party  
 25 payor plan.

26 (b) Every health benefit policy that is delivered, issued, executed, or renewed in this state  
 27 or approved for issuance or renewal in this state by the Commissioner on or after July 1,  
 28 2007, which provides coverage for prescription drugs shall ensure that if a therapeutically  
 29 equivalent drug is selected from the patient's health benefit policy's pharmacy and  
 30 therapeutics committee list for the specifically prescribed drug for purposes of formulary  
 31 adherence with the patient's health benefit policy by a pharmacist in accordance with Code  
 32 Section 26-4-81.1, the insurance provider shall cover such drug dispensed.

33 (c) Nothing in this Code section shall be construed to require any health benefit policy to  
 34 include coverage for prescription drugs.

1 (d) The Commissioner is authorized to enforce this Code section and, in doing so, to  
2 exercise the powers granted to the Commissioner by Code Section 33-2-24 and any other  
3 provision of this title."

4 **SECTION 4.**

5 All laws and parts of laws in conflict with this Act are repealed.