

2005 ASSEMBLY BILL 1210

May 1, 2006 – Introduced by Representatives MUSSER, SINICKI, PETTIS, TURNER, BENEDICT, PETROWSKI, HEBL, SCHNEIDER, KREUSER, KERKMAN, ALBERS, BERCEAU, YOUNG, SHERIDAN, OTT, BIES and OWENS, cosponsored by Senators ERPENBACH and SCHULTZ. Referred to Committee on Health.

1 **AN ACT to renumber** 450.13 (2); **to amend** 448.02 (3) (a); **to repeal and**
2 **recreate** 450.13 (2) (title); and **to create** 450.13 (2) (b) and 609.31 of the
3 statutes; **relating to:** substitutions by pharmacists dispensing epilepsy drugs
4 and requirements for health care plans regarding drug therapy and epilepsy
5 drugs.

Analysis by the Legislative Reference Bureau

Under current law, a pharmacist is required to dispense a prescription using the drug prescribed or, if the price is lower, a drug product that the federal Food and Drug Administration has designated the therapeutic equivalent of the drug prescribed (drug product equivalent). Currently, a pharmacist may not substitute a drug product equivalent if a prescription indicates that no such substitution may be made.

This bill prohibits a pharmacist from substituting a drug product equivalent if the drug prescribed is a drug for treating epilepsy or for treating convulsions, unless the pharmacist obtains and documents the consent of the prescribing practitioner and the patient. Also, if a pharmacist is dispensing a refill of an epilepsy drug, the bill requires the pharmacist to dispense the same drug product, from the same manufacturer, that was previously dispensed, unless the pharmacist obtains and documents the consent of the prescribing practitioner.

Under current law, a participating provider is a health care professional, a health care facility, or a health care service or organization that is under contract

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with a defined network plan, preferred provider plan, or limited service health organization to provide services, items, or supplies to enrollees of the plan or organization. This bill provides that a participating provider determines the appropriate drug therapy for an enrollee. The bill prohibits an insurer offering a defined network plan, preferred provider plan, or limited service health organization from penalizing, financially or otherwise, a participating provider for prescribing, a pharmacist for dispensing, or an enrollee for requesting a specific drug for the treatment of epilepsy.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 448.02 (3) (a) of the statutes is amended to read:

2 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
3 and negligence in treatment by persons holding a license, certificate or limited
4 permit granted by the board. An allegation that a physician has violated s. 253.10
5 (3), 448.30 or 450.13 (2) (a) or has failed to mail or present a medical certification
6 required under s. 69.18 (2) within 21 days after the pronouncement of death of the
7 person who is the subject of the required certificate or that a physician has failed at
8 least 6 times within a 6-month period to mail or present a medical certificate
9 required under s. 69.18 (2) within 6 days after the pronouncement of death of the
10 person who is the subject of the required certificate is an allegation of unprofessional
11 conduct. Information contained in reports filed with the board under s. 49.45 (2) (a)
12 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall be
13 investigated by the board. Information contained in a report filed with the board
14 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
15 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
16 discretion of the board, be used as the basis of an investigation of a person named in
17 the report. The board may require a person holding a license, certificate or limited

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1 permit to undergo and may consider the results of one or more physical, mental or
2 professional competency examinations if the board believes that the results of any
3 such examinations may be useful to the board in conducting its investigation.

4 **SECTION 2.** 450.13 (2) (title) of the statutes is repealed and recreated to read:

5 450.13 (2) (title) EXCEPTIONS.

6 **SECTION 3.** 450.13 (2) of the statutes is renumbered 450.13 (2) (a).

7 **SECTION 4.** 450.13 (2) (b) of the statutes is created to read:

8 450.13 (2) (b) 1. In this paragraph, “epilepsy drug” means any of the following:

9 a. A prescribed drug product for the treatment of epilepsy.

10 b. A prescribed drug product for the treatment or prevention of convulsions, if
11 substitution of a drug product equivalent poses a risk to the health of the patient.

12 2. If a pharmacist dispenses an epilepsy drug, the pharmacist may not dispense
13 the drug product equivalent to the epilepsy drug that is prescribed unless the
14 pharmacist obtains and documents the consent of the practitioner who issued the
15 prescription order and the patient for whom the drug product is prescribed.

16 3. If a pharmacist dispenses a refill of a prescription for an epilepsy drug for
17 a patient or fills a new prescription order for an epilepsy drug for a patient upon the
18 expiration of a prescription order for the same epilepsy drug, the pharmacist shall
19 dispense the same drug product, from the same manufacturer, that was last
20 dispensed, unless the pharmacist obtains and documents the consent of the
21 practitioner who issued the prescription order.

22 **SECTION 5.** 609.31 of the statutes is created to read:

23 **609.31 Drug therapy. (1) PROVIDER DETERMINES.** A participating provider
24 shall determine the appropriate drug therapy for an enrollee.

