



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1589

Introduced 2/26/2021, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

215 ILCS 5/356z.43 new
215 ILCS 134/25
225 ILCS 85/26

Amends the Illinois Insurance Code. Provides that an individual or group policy of accident and health insurance amended, delivered, issued, or renewed after the effective date of the amendatory Act shall provide coverage for anti-epileptic drugs. Provides that coverage for anti-epileptic drugs may not impose a waiting period or any deductible, coinsurance, copayment, or other cost-sharing limitation. Defines "anti-epileptic drug", "epilepsy", and "seizure". Amends the Managed Care Reform and Patient Rights Act. Provides that anti-seizure prescription drugs may not be substituted with a generic drug under provisions of the Pharmacy Practice Act under which a pharmacist may substitute a therapeutically equivalent generic drug for a prescription drug. Amends the Pharmacy Practice Act. Provides that a pharmacist may not interchange an anti-epileptic drug or formulation of an anti-epileptic drug for the treatment of epilepsy. Provides that a prescribing physician shall document that such anti-epileptic drug or formulation of an anti-epileptic drug for the treatment of epilepsy is clinically necessary for the patient's optimal care. Removes provisions concerning notification and consent required when a physician substitutes a generic prescription in place of a brand-name anti-epileptic drug.

LRB102 13155 BMS 18498 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 adding Section 356z.43 as follows:

6 (215 ILCS 5/356z.43 new)

7 Sec. 356z.43. Coverage of anti-seizure prescription drugs.

8 (a) The General Assembly finds that this Section is
9 necessary for the immediate preservation of public peace,
10 health, and safety.

11 (b) In this Section:

12 "Anti-epileptic drug" means (i) a drug prescribed for the
13 treatment of epilepsy or (ii) a drug used to treat or prevent
14 seizures.

15 "Epilepsy" means a neurological condition characterized by
16 recurrent seizures.

17 "Seizure" means a brief disturbance in the electrical
18 activity of the brain.

19 (c) An individual or group policy of accident and health
20 insurance amended, delivered, issued, or renewed in this State
21 after the effective date of this amendatory Act of the 102nd
22 General Assembly shall provide coverage for anti-epileptic
23 drugs.

1 (d) Coverage required under this Section may not impose a
2 waiting period or any deductible, coinsurance, copayment, or
3 other cost-sharing limitation that is greater than that
4 required for other coverage under the policy.

5 Section 10. The Managed Care Reform and Patient Rights Act
6 is amended by changing Section 25 as follows:

7 (215 ILCS 134/25)

8 Sec. 25. Transition of services.

9 (a) A health care plan shall provide for continuity of
10 care for its enrollees as follows:

11 (1) If an enrollee's physician leaves the health care
12 plan's network of health care providers for reasons other
13 than termination of a contract in situations involving
14 imminent harm to a patient or a final disciplinary action
15 by a State licensing board and the physician remains
16 within the health care plan's service area, the health
17 care plan shall permit the enrollee to continue an ongoing
18 course of treatment with that physician during a
19 transitional period:

20 (A) of 90 days from the date of the notice of
21 physician's termination from the health care plan to
22 the enrollee of the physician's disaffiliation from
23 the health care plan if the enrollee has an ongoing
24 course of treatment; or

1 (B) if the enrollee has entered the third
2 trimester of pregnancy at the time of the physician's
3 disaffiliation, that includes the provision of
4 post-partum care directly related to the delivery.

5 (2) Notwithstanding the provisions in item (1) of this
6 subsection, such care shall be authorized by the health
7 care plan during the transitional period only if the
8 physician agrees:

9 (A) to continue to accept reimbursement from the
10 health care plan at the rates applicable prior to the
11 start of the transitional period;

12 (B) to adhere to the health care plan's quality
13 assurance requirements and to provide to the health
14 care plan necessary medical information related to
15 such care; and

16 (C) to otherwise adhere to the health care plan's
17 policies and procedures, including but not limited to
18 procedures regarding referrals and obtaining
19 preauthorizations for treatment.

20 (3) During an enrollee's plan year, a health care plan
21 shall not remove a drug from its formulary or negatively
22 change its preferred or cost-tier sharing unless, at least
23 60 days before making the formulary change, the health
24 care plan:

25 (A) provides general notification of the change in
26 its formulary to current and prospective enrollees;

1 (B) directly notifies enrollees currently
2 receiving coverage for the drug, including information
3 on the specific drugs involved and the steps they may
4 take to request coverage determinations and
5 exceptions, including a statement that a certification
6 of medical necessity by the enrollee's prescribing
7 provider will result in continuation of coverage at
8 the existing level; and

9 (C) directly notifies by first class mail and
10 through an electronic transmission, if available, the
11 prescribing provider of all health care plan enrollees
12 currently prescribed the drug affected by the proposed
13 change; the notice shall include a one-page form by
14 which the prescribing provider can notify the health
15 care plan by first class mail that coverage of the drug
16 for the enrollee is medically necessary.

17 The notification in paragraph (C) may direct the
18 prescribing provider to an electronic portal through which
19 the prescribing provider may electronically file a
20 certification to the health care plan that coverage of the
21 drug for the enrollee is medically necessary. The
22 prescribing provider may make a secure electronic
23 signature beside the words "certification of medical
24 necessity", and this certification shall authorize
25 continuation of coverage for the drug.

26 If the prescribing provider certifies to the health

1 care plan either in writing or electronically that the
2 drug is medically necessary for the enrollee as provided
3 in paragraph (C), a health care plan shall authorize
4 coverage for the drug prescribed based solely on the
5 prescribing provider's assertion that coverage is
6 medically necessary, and the health care plan is
7 prohibited from making modifications to the coverage
8 related to the covered drug, including, but not limited
9 to:

10 (i) increasing the out-of-pocket costs for the
11 covered drug;

12 (ii) moving the covered drug to a more restrictive
13 tier; or

14 (iii) denying an enrollee coverage of the drug for
15 which the enrollee has been previously approved for
16 coverage by the health care plan.

17 Nothing in this item (3) prevents a health care plan
18 from removing a drug from its formulary or denying an
19 enrollee coverage if the United States Food and Drug
20 Administration has issued a statement about the drug that
21 calls into question the clinical safety of the drug, the
22 drug manufacturer has notified the United States Food and
23 Drug Administration of a manufacturing discontinuance or
24 potential discontinuance of the drug as required by
25 Section 506C of the Federal Food, Drug, and Cosmetic Act,
26 as codified in 21 U.S.C. 356c, or the drug manufacturer

1 has removed the drug from the market.

2 Nothing in this item (3) prohibits a health care plan,
3 by contract, written policy or procedure, or any other
4 agreement or course of conduct, from requiring a
5 pharmacist to effect substitutions of prescription drugs
6 consistent with Section 19.5 of the Pharmacy Practice Act,
7 under which a pharmacist may substitute an interchangeable
8 biologic for a prescribed biologic product, and Section 25
9 of the Pharmacy Practice Act, under which a pharmacist may
10 select a generic drug determined to be therapeutically
11 equivalent by the United States Food and Drug
12 Administration and in accordance with the Illinois Food,
13 Drug and Cosmetic Act, with the exception of anti-seizure
14 prescription drugs, which may not be substituted with a
15 generic drug.

16 This item (3) applies to a policy or contract that is
17 amended, delivered, issued, or renewed on or after January
18 1, 2019. This item (3) does not apply to a health plan as
19 defined in the State Employees Group Insurance Act of 1971
20 or medical assistance under Article V of the Illinois
21 Public Aid Code.

22 (b) A health care plan shall provide for continuity of
23 care for new enrollees as follows:

24 (1) If a new enrollee whose physician is not a member
25 of the health care plan's provider network, but is within
26 the health care plan's service area, enrolls in the health

1 care plan, the health care plan shall permit the enrollee
2 to continue an ongoing course of treatment with the
3 enrollee's current physician during a transitional period:

4 (A) of 90 days from the effective date of
5 enrollment if the enrollee has an ongoing course of
6 treatment; or

7 (B) if the enrollee has entered the third
8 trimester of pregnancy at the effective date of
9 enrollment, that includes the provision of post-partum
10 care directly related to the delivery.

11 (2) If an enrollee elects to continue to receive care
12 from such physician pursuant to item (1) of this
13 subsection, such care shall be authorized by the health
14 care plan for the transitional period only if the
15 physician agrees:

16 (A) to accept reimbursement from the health care
17 plan at rates established by the health care plan;
18 such rates shall be the level of reimbursement
19 applicable to similar physicians within the health
20 care plan for such services;

21 (B) to adhere to the health care plan's quality
22 assurance requirements and to provide to the health
23 care plan necessary medical information related to
24 such care; and

25 (C) to otherwise adhere to the health care plan's
26 policies and procedures including, but not limited to

1 procedures regarding referrals and obtaining
2 preauthorization for treatment.

3 (c) In no event shall this Section be construed to require
4 a health care plan to provide coverage for benefits not
5 otherwise covered or to diminish or impair preexisting
6 condition limitations contained in the enrollee's contract. In
7 no event shall this Section be construed to prohibit the
8 addition of prescription drugs to a health care plan's list of
9 covered drugs during the coverage year.

10 (Source: P.A. 100-1052, eff. 8-24-18.)

11 Section 15. The Pharmacy Practice Act is amended by
12 changing Section 26 as follows:

13 (225 ILCS 85/26)

14 (Section scheduled to be repealed on January 1, 2023)

15 Sec. 26. Anti-epileptic drug product selection prohibited.

16 (a) The General Assembly finds that this Section is
17 necessary for the immediate preservation of the public peace,
18 health, and safety.

19 (b) In this Section:

20 "Anti-epileptic drug" means (i) any drug prescribed for
21 the treatment of epilepsy or (ii) a drug used to treat or
22 prevent seizures.

23 "Epilepsy" means a neurological condition characterized by
24 recurrent seizures.

1 "Seizure" means a brief disturbance in the electrical
2 activity of the brain.

3 (c) ~~A~~ ~~When the prescribing physician has indicated on the~~
4 ~~original prescription "may not substitute", a pharmacist may~~
5 ~~not interchange an anti-epileptic drug or formulation of an~~
6 ~~anti-epileptic drug for the treatment of epilepsy. The~~
7 ~~prescribing physician shall document that such anti-epileptic~~
8 ~~drug or formulation of an anti-epileptic drug for the~~
9 ~~treatment of epilepsy is clinically necessary for the~~
10 ~~patient's optimal care without notification and the documented~~
11 ~~consent of the prescribing physician and the patient or the~~
12 ~~patient's parent, legal guardian, or spouse. This Section does~~
13 ~~not apply to medication orders issued for anti-epileptic drugs~~
14 ~~for any in-patient care in a licensed hospital.~~

15 (d) (Blank). ~~If a pharmacist substitutes any generic~~
16 ~~prescription in place of a brand name anti-epileptic drug,~~
17 ~~then the pharmacist shall provide written notice to the~~
18 ~~patient no later than the time the prescription is dispensed.~~

19 (Source: P.A. 97-456, eff. 1-1-12.)