



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3545

Introduced 2/14/2020, 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.

LRB101 17805 BMS 67235 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 adding  
5 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 101st  
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 care  
10       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 within  
16       the health care plan's service area, the health care plan  
17       shall permit the enrollee to continue an ongoing course of  
18       treatment with that physician during a transitional  
19       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 trimester  
2 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 care  
24 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 the  
8 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 drug  
2 is medically necessary for the enrollee as provided in  
3 paragraph (C), a health care plan shall authorize coverage  
4 for the drug prescribed based solely on the prescribing  
5 provider's assertion that coverage is medically necessary,  
6 and the health care plan is prohibited from making  
7 modifications to the coverage related to the covered drug,  
8 including, but not limited to:

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

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

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

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

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

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

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

22           (1) If a new enrollee whose physician is not a member  
23          of the health care plan's provider network, but is within  
24          the health care plan's service area, enrolls in the health  
25          care plan, the health care plan shall permit the enrollee  
26          to continue an ongoing course of treatment with the

1 enrollee's current physician during a transitional period:

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

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

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

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

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

23 (C) to otherwise adhere to the health care plan's  
24 policies and procedures including, but not limited to  
25 procedures regarding referrals and obtaining  
26 preauthorization for treatment.



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

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

9 Section 15. The Pharmacy Practice Act is amended by  
10 changing Section 26 as follows:

11 (225 ILCS 85/26)

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

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

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

17 (b) In this Section:

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

21 "Epilepsy" means a neurological condition characterized by  
22 recurrent seizures.

23 "Seizure" means a brief disturbance in the electrical  
24 activity of the brain.

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

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

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