

COUNCIL OF THE DISTRICT OF COLUMBIA

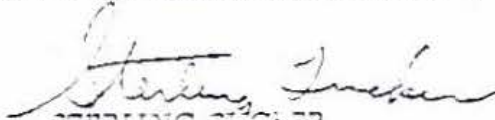
NOTICE

D.C. Law 1-81--"District of Columbia
Prescription Drug Price Information Act " .

September 23, 1976

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, PL 93-198 (the Act), the Council of the District of Columbia adopted Bill No. 1-80 on first and second readings May 3, 1976 and May 18, 1976, respectively. Following the Mayor's signature on June 16, 1976, this legislation was assigned Act No. 1-134, published in the July 2, 1976, edition of the D.C. Register, and transmitted to both Houses of Congress for a 30-day review, in accordance with Section 602 (c) (1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has expired and, therefore, cites the following legislation as D.C. Law 1-81, effective September 10, 1976.


STERLING TUCKER
Chairman of the Council

(Ref. 23, D.C. Reg. 99, July 1, 1976)

D.C. LAW 1-81

In the Council of the District of Columbia

September 10, 1976

To permit the advertising of drug prices, to require retailers of prescription drugs to post the prices of certain commonly prescribed drugs, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "District of Columbia
Prescription Drug Price Information Act".

Sec. 2. As used in this act, the term-

(a) "issue date" means the first day of the fourth full calendar month after the effective date of this act, and the day following the end of each year after the first such issue date.

(b) "most commonly used drugs" means the legend drugs with separate proprietary names, prescriptions (in all dosages) for which were most frequently paid for by the Medicaid program operated by the District of Columbia government under a state plan filed in accordance with section 1902 of the Social Security Act (42 U.S.C. 1396a),

in the three consecutive months ending sixty days before an issue date.

(c) "pharmacy" means a shop or other place at which drugs, chemicals, or poisons, as those terms are used in the Act of May 7, 1906 (D.C. Code, sec. 2-601 et seq.), are sold at retail.

(d) "proprietary name" means a brand name of, or a name generally used by physicians in prescribing, a legend drug generally obtained from a certain manufacturer, manufacturer's licensee, or other source, whether or not such proprietary name is also the established name or official name, as defined in sections 502(e) (2) and 508(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e) (2) and 353(a)), the name found in a drug compendium, the proper chemical name of the active ingredients, or the "generic" name.

(e) "person" means any individual, partnership, corporation, organization, or association.

(f) "drug" means any chemical human medication with one or more known active ingredients.

(g) "therapeutically equivalent drugs" means legend drugs with different proprietary names (whether such drugs have the same manufacturer or not), whose active ingredients have identical chemical formulae, and which drugs are

essentially equivalent therapeutically, as determined by the Department of Human Resources from its own information and proposed or final regulations and warnings of the United States Department of Health, Education and Welfare or its component agencies.

(h) "professional and convenience services" includes, but is not limited to:

- (1) patient consultations;
- (2) patient profiles;
- (3) prescription charting;
- (4) emergency prescription service;
- (5) personal delivery;
- (6) mail delivery;
- (7) credit services;
- (8) staying open 24 hours per day;

(i) "current selling price" means all charges of a particular pharmacy to a consumer with respect to a prescribed drug, except additional charges for professional and convenience services;

(j) "drug product" means a drug identified by proprietary name.

TITLE I -- PRESCRIPTION DRUG PRICE POSTING

Sec. 101. Thirty days prior to each issue date, the Department of Human Resources shall furnish to the Office of Consumer Affairs a list of the 100 most commonly used drugs.

Sec. 102. Ten days prior to each issue date, the Office of Consumer Affairs shall furnish to each pharmacy in the District a poster suitable for display, of a type style and size so as to be easily readable at a reasonable distance, which-

(a) lists the 100 most commonly used drugs by proprietary name, including, for each such drug:

(1) two commonly prescribed sets of quantity and strength, with space for the current selling price of each set;

(2) an indication, if appropriate, of what therapeutically equivalent drugs may be commonly available for purchase by pharmacies in the District;

(b) lists professional and convenience services, with space for each pharmacy to indicate:

(1) whether it offers each service;

(2) the additional charge, if any, for that service;

(c) a heading stating "OUR CURRENT PRESCRIPTION PRICES" and containing spaces for the insertion of the name and address of each pharmacy;

(d) indicates in simple language that:

(1) the price of a prescription drug is often different at different pharmacies, and that the consumer may want to make a comparison on the cost of a prescription;

(2) the pharmacy may be able to substitute a less expensive drug which is therapeutically equivalent to the one prescribed by the consumer's doctor, unless the consumer does not approve;

(3) the consumer has the right to know the exact price of a prescription before it is filled;

(e) provides space for each pharmacy to indicate the eligibility and terms of any discount it offers on legend drugs.

Sec. 103. On and after each issue date, each pharmacy shall legibly post on the poster its current selling prices for the 100 most commonly used drugs, the professional and convenience services it offers and the additional charges therefor, and the eligibility and terms of any discount it offers on legend drugs. The completed poster shall be displayed prominently in the immediate vicinity of the

prescription drug service area in such a manner as to be easily visible to consumers without having to obtain permission or assistance of an employee of the pharmacy.

Sec. 104. The current selling price of all legend drugs (including those not required to be posted) dispensed by each pharmacy, and the pharmacy's discounts and professional and convenience services and charges therefor, shall be available and be quoted, correctly and free of charge, by the pharmacy upon request identifying the name, strength, and quantity prescribed by a physician, whether the request is made in person, in writing, by telephone, or in any other manner.

Sec. 105. No pharmacy may fail to provide to any consumer the discounts and services stated on the poster, under the eligibility, price, and other terms there stated. Every sale of one of the 100 most commonly used drugs, in a quantity and strength which requires the price of the drug to be posted, shall be at the posted price, unless a decrease in price is authorized by title III of this act.

Sec. 106. A pharmacy may change any current selling price, discount, service availability or service charge, at any time, provided, that the poster and sources of consumer information are adjusted accordingly.

TITLE II -- ADVERTISING

Sec. 201. No person may directly or indirectly prohibit, hinder or restrict or attempt to prohibit or restrict, the disclosure by any pharmacy, government agency, or other person, of accurate price information regarding prescription drugs, including such disclosure made by means of advertisements in print or broadcast media, or by other means.

TITLE III -- SUBSTITUTION OF THERAPEUTICALLY EQUIVALENT DRUGS

Sec. 301. Not later than 30 days prior to each issue date, the Department of Human Resources shall furnish to the Office of Consumer Affairs and to all pharmacies in the District a list of all therapeutically equivalent drugs. The Department of Human Resources shall promptly furnish change notices to this list when necessary. The Department of Human Resources may also furnish a list of drugs with chemically identical active ingredients which it determines should not be substituted for one another.

Sec. 302. It shall be lawful for a licensed pharmacist to substitute a therapeutically equivalent drug for a drug product prescribed by a physician. Such a substitution may be made without consulting the patient or the physician. No person may, by trade or work rule, contract, or in any other way, prohibit, restrict or limit, or attempt to prohibit,

restrict or limit, the making of such a substitution, except:

(a) the person physically purchasing a drug or the patient for whom it is intended may indicate a preference for, and in such case shall be furnished with, the drug actually prescribed;

(b) the prescribing physician may certify in his/her own handwriting that in his/her medical judgment a specific brand is medically necessary for a particular patient. Examples of acceptable certifications would be the notations "brand necessary" and "B.N.", or, when the prescription or certification is communicated by telephone, the same notations in the pharmacist's own handwriting. A procedure for checking a box, preprinted, stamped or initialed on a prescription form, will not constitute an acceptable notation.

Sec. 303. A pharmacist shall substitute a drug under section 302 only when there will be a savings or no increase in cost to the buyer, except with the consent of the buyer. If the drug product prescribed is not in stock, a pharmacy may substitute only its lowest retail cost therapeutically equivalent drug in stock.

Sec. 304. When a drug is substituted under section 302, the pharmacist shall record on the prescription form

the drug substituted by name and manufacturer, and retain the form for inspection by District officials. The pharmacist shall also label the prescription container with the name of the drug substituted, unless the prescribing physician writes "do not label", or words of similar import, on the prescription, or, in communicating the prescription by telephone, orders that the container not be so labelled.

Sec. 305. (a) The substitution of therapeutically equivalent drugs by a licensed pharmacist under section 302 shall not constitute the practice of medicine.

(b) Substitution of drugs made in accordance with section 302 shall not constitute evidence of negligence or improper pharmacy practice if the substitution was made within reasonable and prudent pharmacy practice or if the prescribed and substituted drugs were therapeutically equivalent drugs as defined in this act.

(c) Failure of a licensed physician to specify that a specific brand is necessary for the particular patient shall not constitute evidence of negligence unless the physician had reasonable cause to believe that the health of the patient required the use of a certain drug product and no other.

TITLE IV -- ENFORCEMENT AND EFFECTIVE DATE

Sec. 401. Any pharmacy which sells a legend drug in violation of sections 103, 104, or 105 of this act is liable to the buyer, or the provider or insurer of the buyer, for the full amount charged for the drug.

Sec. 402. Any person who, by any means, interferes with, prevents, discourages, or attempts to interfere with, prevent, or discourage:

(a) any disclosure of, or attempt to disclose, or action necessary to disclose, substantially accurate prices, discounts, services, or other information concerning any prescription drug, whether or not such disclosure is authorized or directed in this act, or is through any media or other form of communication, or is made or to be made by any publisher, broadcaster, pharmacy, pharmacist, advertiser, drug manufacturer, wholesaler, or chain, government agency, or any other person, or

(b) any retail drug price-setting, substitution, or marketing policy or action required, encouraged or permitted by, or consistent with this act, has committed a restraint of trade, and has caused a tortious injury in the District of Columbia as described in paragraphs 10-122(a)(3) and (4) of the District of Columbia Code, and shall be liable for treble civil damages to each and every person (including a

pharmacy or pharmacist), health insurer, and government agency the object of or injured by such interference, prevention, discouragement, or attempt to interfere, prevent, or discourage. Any action which jeopardizes in any way, or raises the net price of, the supply from manufacturers or wholesalers of drugs to any pharmacy, government agency, health insurer, or person providing or paying for a drug in the District, may comprise such an interference, prevention, discouragement, or attempt.

Sec. 403. After reasonable notice, the Office of Consumer Affairs may inspect the pricing records and practices of any pharmacy or other person, to assure compliance with this act. After appropriate notice and hearing, the Office may, if it finds that any person has violated this act, issue a cease and desist order against continued or future violation, and such other orders as may otherwise be within powers of that Office. If the Office of Consumer Affairs is abolished, and the Office of Consumer Protection proposed to be established in Council Bill No. 1-253 has been established, then all references in this act to the Office of Consumer Affairs shall be deemed to be references to the Office of Consumer Protection.

Sec. 404. This act shall take effect immediately after the period provided for Congressional review in section

Enrolled Original

-12-

602 (c) (1) of the District of Columbia Self-Government and
Governmental Reorganization Act.

Docket for the Bill Bill 1-80

Considered in Council 5-3-76

First Vote 12-0-1(abs)

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER	X				DIXON	X				SPAULDING	X			
MOORE, D.				X	HARDY	X				WILSON	X			
BARRY	X				HOBSON	X				WINTER		X		
CLARKE	X				MOORE, J.	X								
COATES	X				SHACKLETON	X								

X—Indicates Vote A. B.—Absent N. V.—Not Voting

(Secretary of the Council)

Final Vote in Council 5-18-76

11-0-2(abs)

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER	X				DIXON	X				SPAULDING	X			
MOORE, D.	X				HARDY	X				WILSON	X			
BARRY	X				HOBSON	X				WINTER			X	
CLARKE			X		MOORE, J.	X								
COATES	X				SHACKLETON	X								

X—Indicates Vote A. B.—Absent N. V.—Not Voting

(Secretary of the Council)

Presented to the Mayor JUN 2 1976

(Secretary of the Council)

Mayor's Action:

Approved: 16 JUN 1976

Disapproved: _____

Robert Washington
 (Mayor's Signature) JUN 1976

Enacted without Mayor's Signature _____

(Secretary of the Council)

Reconsidered by Council _____ Vote _____

RECORD OF COUNCIL VOTE														
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER					DIXON					SPAULDING				
MOORE, D.					HARDY					WILSON				
BARRY					HOBSON					WINTER				
CLARKE					MOORE, J.									
COATES					SHACKLETON									

X—Indicates Vote A. B.—Absent N. V.—Not Voting

 (Secretary of the Council)

Presented to the President _____

 (Secretary of the Council)

Sustain Mayor's Veto _____
 Not Sustain Mayor's Veto _____

 (President of the U. S.)

Submitted to the Congress _____

 (Secretary of the Council)

Senate Action _____
 Resolution Number _____

House Action _____
 Resolution Number _____

 (Secretary of the Senate)

 (Clerk of the House)

Enacted without Congressional action _____

 (Secretary of the Council)