S T A T E O F N E W Y O R K

11228--A

I N A S S E M B L Y

May 25, 2010

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to electronic prescriptions and generic substitution

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 6802 of the education law is amended by adding a new subdivision 23 to read as follows:

23. "ELECTRONIC PRESCRIPTION" MEANS A PRESCRIPTION CREATED, RECORDED, OR STORED BY ELECTRONIC MEANS; ISSUED WITH AN ELECTRONIC SIGNATURE; AND TRANSMITTED BY ELECTRONIC MEANS, IN ACCORDANCE WITH REGULATIONS OF THE COMMISSIONER AND APPLICABLE REGULATIONS OF THE COMMISSIONER OF HEALTH AND FEDERAL REGULATIONS; PROVIDED, HOWEVER, THAT AN ORIGINAL HARD COPY PRESCRIPTION THAT IS CREATED ELECTRONICALLY OR OTHERWISE MAY BE TRANSMITTED FROM THE PRESCRIBER TO THE PHARMACIST BY FACSIMILE AND MUST BE MANUALLY SIGNED. "ELECTRONIC" MEANS OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES. "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL, OR PROCESS, ATTACHED TO OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC PRESCRIPTION AND EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN THE PRESCRIPTION, IN ACCORDANCE WITH REGULATIONS OF THE COMMISSIONER AND APPLICABLE REGULATIONS OF THE COMMISSIONER OF HEALTH AND FEDERAL REGULATIONS.

S 2. Paragraph (a) of subdivision 6 of section 6810 of the education law, as amended by chapter 649 of the laws of 1993, is amended to read as follows:

(a) Every prescription written in this state by a person authorized to issue such prescription shall be on prescription forms containing one line for the prescriber's signature. The prescriber's signature shall validate the prescription. EVERY ELECTRONIC PRESCRIPTION SHALL PROVIDE FOR THE PRESCRIBER'S ELECTRONIC SIGNATURE, WHICH SHALL VALIDATE THE ELECTRONIC PRESCRIPTION. Imprinted conspicuously ON EVERY PRESCRIPTION WRITTEN IN THIS STATE in eight point upper case type immediately below

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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the signature line shall be the words: "THIS PRESCRIPTION WILL BE FILLED GENERICALLY UNLESS PRESCRIBER WRITES 'd a w' IN THE BOX BELOW". Unless the prescriber writes d a w in such box in the prescriber's own handwriting OR, IN THE CASE OF ELECTRONIC PRESCRIPTIONS, INSERTS AN ELECTRONIC DIRECTION TO DISPENSE THE DRUG AS WRITTEN, the prescriber's signature OR ELECTRONIC SIGNATURE shall designate approval of substitution by a pharmacist of a drug product pursuant to paragraph (o) of subdivision one of section two hundred six of the public health law. No other letters or marks in such box shall prohibit substitution. No prescription forms used or intended to be used by a person authorized to issue a prescription shall have 'd a w' preprinted in such box. Such box shall be placed directly under the signature line and shall be three-quarters inch in length and one-half inch in height, OR IN COMPARABLE FORM FOR AN ELECTRONIC PRESCRIPTION AS MAY BE SPECIFIED BY REGULATION OF THE COMMISSIONER. Immediately below such box shall be imprinted in six point type the words "Dispense As Written". Notwithstanding any other provision of law, no state official, agency, board or other entity shall promulgate any regulation or guideline modifying those elements of the prescription form's contents specified in this subdivision. To the extent otherwise permitted by law, a prescriber may modify only those elements of the prescription form's contents not specified in this subdivision. Notwithstanding any other provision of this section or any other law, when a generic drug is not available and the brand name drug originally prescribed is available and the pharmacist agrees to dispense the brand name product for a price that will not exceed the price that would have been charged for the generic substitute had it been available, substitution of a generic drug product will not be required. If the generic drug product is not available and a medical emergency situation, which for purposes of this section is defined as any condition requiring alleviation of severe pain or which threatens to cause disability or take life if not promptly treated, exists, then the pharmacist may dispense the brand name product at his regular price. In such instances the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions.

S 3. This act shall not be construed to mean or imply that any reference in any statute or regulation to a prescription, signature, or writing does not include an electronic prescription, electronic signature, or entry of information by electronic means, respectively.

S 4. This act shall take effect immediately.