

4245

2011-2012 Regular Sessions

I N   S E N A T E

March 24, 2011

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Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

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:

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

3     23. "ELECTRONIC PRESCRIPTION" MEANS A PRESCRIPTION CREATED, RECORDED,  
4 OR STORED BY ELECTRONIC MEANS; ISSUED WITH AN ELECTRONIC SIGNATURE; AND  
5 TRANSMITTED BY ELECTRONIC MEANS, IN ACCORDANCE WITH REGULATIONS OF THE  
6 COMMISSIONER AND APPLICABLE REGULATIONS OF THE COMMISSIONER OF HEALTH  
7 AND FEDERAL REGULATIONS; PROVIDED, HOWEVER, THAT AN ORIGINAL HARD COPY  
8 PRESCRIPTION THAT IS CREATED ELECTRONICALLY OR OTHERWISE MAY BE TRANS-  
9 MITTED FROM THE PRESCRIBER TO THE PHARMACIST BY FACSIMILE AND MUST BE  
10 MANUALLY SIGNED. "ELECTRONIC" MEANS OF OR RELATING TO TECHNOLOGY HAVING  
11 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR  
12 SIMILAR CAPABILITIES. "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND,  
13 SYMBOL, OR PROCESS, ATTACHED TO OR LOGICALLY ASSOCIATED WITH AN ELEC-  
14 TRONIC PRESCRIPTION AND EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT  
15 TO SIGN THE PRESCRIPTION, IN ACCORDANCE WITH REGULATIONS OF THE COMMIS-  
16 SIONER AND APPLICABLE REGULATIONS OF THE COMMISSIONER OF HEALTH AND  
17 FEDERAL REGULATIONS.

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

21     (a) Every prescription written in this state by a person authorized to  
22 issue such prescription shall be on prescription forms containing one  
23 line for the prescriber's signature. The prescriber's signature shall  
24 validate the prescription. EVERY ELECTRONIC PRESCRIPTION SHALL PROVIDE  
25 FOR THE PRESCRIBER'S ELECTRONIC SIGNATURE, WHICH SHALL VALIDATE THE

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

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1 ELECTRONIC PRESCRIPTION. Imprinted conspicuously ON EVERY PRESCRIPTION  
2 WRITTEN IN THIS STATE in eight point upper case type immediately below  
3 the signature line shall be the words: "THIS PRESCRIPTION WILL BE FILLED  
4 GENERICALLY UNLESS PRESCRIBER WRITES 'd a w' IN THE BOX BELOW". Unless  
5 the prescriber writes d a w in such box in the prescriber's own hand-  
6 writing OR, IN THE CASE OF ELECTRONIC PRESCRIPTIONS, INSERTS AN ELEC-  
7 TRONIC DIRECTION TO DISPENSE THE DRUG AS WRITTEN, the prescriber's  
8 signature OR ELECTRONIC SIGNATURE shall designate approval of substi-  
9 tion by a pharmacist of a drug product pursuant to paragraph (o) of  
10 subdivision one of section two hundred six of the public health law. No  
11 other letters or marks in such box shall prohibit substitution. No  
12 prescription forms used or intended to be used by a person authorized to  
13 issue a prescription shall have 'd a w' preprinted in such box. Such box  
14 shall be placed directly under the signature line and shall be three-  
15 quarters inch in length and one-half inch in height, OR IN COMPARABLE  
16 FORM FOR AN ELECTRONIC PRESCRIPTION AS MAY BE SPECIFIED BY REGULATION OF  
17 THE COMMISSIONER. Immediately below such box shall be imprinted in six  
18 point type the words "Dispense As Written". Notwithstanding any other  
19 provision of law, no state official, agency, board or other entity shall  
20 promulgate any regulation or guideline modifying those elements of the  
21 prescription form's contents specified in this subdivision. To the  
22 extent otherwise permitted by law, a prescriber may modify only those  
23 elements of the prescription form's contents not specified in this  
24 subdivision. Notwithstanding any other provision of this section or any  
25 other law, when a generic drug is not available and the brand name drug  
26 originally prescribed is available and the pharmacist agrees to dispense  
27 the brand name product for a price that will not exceed the price that  
28 would have been charged for the generic substitute had it been avail-  
29 able, substitution of a generic drug product will not be required. If  
30 the generic drug product is not available and a medical emergency situ-  
31 ation, which for purposes of this section is defined as any condition  
32 requiring alleviation of severe pain or which threatens to cause disa-  
33 bility or take life if not promptly treated, exists, then the pharmacist  
34 may dispense the brand name product at his regular price. In such  
35 instances the pharmacist must record the date, hour and nature of the  
36 medical emergency on the back of the prescription and keep a copy of all  
37 such prescriptions.

38 S 3. This act shall not be construed to mean or imply that any refer-  
39 ence in any statute or regulation to a prescription, signature, or writ-  
40 ing does not include an electronic prescription, electronic signature,  
41 or entry of information by electronic means, respectively.

42 S 4. This act shall take effect immediately.