

# STATE OF NEW YORK

2391--A

2019-2020 Regular Sessions

## IN SENATE

January 24, 2019

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the education law, in relation to generic drug products; and to repeal paragraph (o) of subdivision 1 of section 206 of the public health law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (o) of subdivision 1 of section 206 of the public  
2 health law is REPEALED.

3 § 2. The public health law is amended by adding a new section 280-d to  
4 read as follows:

5 § 280-d. Generic drug products. 1. The commissioner shall establish  
6 and publish a list of drug products, referred to in this section as  
7 "generic drug" products, each of which shall meet the following condi-  
8 tions:

9 (a) The drug product has been certified or approved by the commission-  
10 er of the Federal Food and Drug Administration as being safe and effec-  
11 tive for its labeled indications for use, and a new-drug application or  
12 an abbreviated new-drug application approved pursuant to the Federal  
13 Food, Drug, and Cosmetic Act is held for such drug product; and

14 (b) The commissioner of the Federal Food and Drug Administration has  
15 evaluated such drug product as: (i) pharmaceutically and therapeutically  
16 equivalent and has listed such drug product on the list of approved drug  
17 products with the therapeutic equivalence evaluations, provided, howev-  
18 er, that the list prepared by the commissioner shall not include any  
19 drug product which the commissioner of the Federal Food and Drug Admin-  
20 istration has identified as having an actual or potential bioequivalence  
21 problem or (ii) as an interchangeable biological product and has listed

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

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1 such product on the list of approved drug products with interchangeabil-  
2 ity.

3 2. The manufacturer of a generic drug product shall make available to  
4 the department the studies and summaries, including bioequivalence data,  
5 therapeutic equivalence data, and incidence of adverse events, and asso-  
6 ciated analytical methods, including dissolution data and test methods  
7 provided to the Federal Food and Drug Administration as part of the  
8 application for such generic drug product. The department shall make  
9 such information freely and publicly available on its website.

10 § 3. Paragraphs (a) and (e) of subdivision 6 of section 6810 of the  
11 education law, paragraph (a) as amended by chapter 590 of the laws of  
12 2011 and paragraph (e) as amended by chapter 357 of the laws of 2017,  
13 are amended to read as follows:

14 (a) Every prescription written in this state by a person authorized to  
15 issue such prescription shall be on prescription forms containing one  
16 line for the prescriber's signature. The prescriber's signature shall  
17 validate the prescription. Every electronic prescription shall provide  
18 for the prescriber's electronic signature, which shall validate the  
19 electronic prescription. Imprinted conspicuously on every prescription  
20 written in this state in eight point upper case type immediately below  
21 the signature line shall be the words: "THIS PRESCRIPTION WILL BE FILLED  
22 GENERICALLY UNLESS PRESCRIBER WRITES 'd a w' IN THE BOX BELOW". Unless  
23 the prescriber writes d a w in such box in the prescriber's own hand-  
24 writing or, in the case of electronic prescriptions, inserts an elec-  
25 tronic direction to dispense the drug as written, the prescriber's  
26 signature or electronic signature shall designate approval of substi-  
27 tution by a pharmacist of a generic drug product pursuant to [~~paragraph~~  
28 ~~(e) of subdivision one of~~] section [~~two hundred six~~] two hundred eight-  
29 y-d of the public health law. No other letters or marks in such box  
30 shall prohibit substitution. No prescription forms used or intended to  
31 be used by a person authorized to issue a prescription shall have 'd a  
32 w' preprinted in such box. Such box shall be placed directly under the  
33 signature line and shall be three-quarters inch in length and one-half  
34 inch in height, or in comparable form for an electronic prescription as  
35 may be specified by regulation of the commissioner. Immediately below  
36 such box shall be imprinted in six point type the words "Dispense As  
37 Written". Notwithstanding any other provision of law, no state offi-  
38 cial, agency, board or other entity shall promulgate any regulation or  
39 guideline modifying those elements of the prescription form's contents  
40 specified in this subdivision. To the extent otherwise permitted by law,  
41 a prescriber may modify only those elements of the prescription form's  
42 contents not specified in this subdivision. Notwithstanding any other  
43 provision of this section or any other law, when a generic drug is not  
44 available and the brand name drug originally prescribed is available and  
45 the pharmacist agrees to dispense the brand name product for a price  
46 that will not exceed the price that would have been charged for the  
47 generic substitute had it been available, substitution of a generic drug  
48 product will not be required. If the generic drug product is not avail-  
49 able and a medical emergency situation, which for purposes of this  
50 section is defined as any condition requiring alleviation of severe pain  
51 or which threatens to cause disability or take life if not promptly  
52 treated, exists, then the pharmacist may dispense the brand name product  
53 at his regular price. In such instances the pharmacist must record the  
54 date, hour and nature of the medical emergency on the back of the  
55 prescription and keep a copy of all such prescriptions.

1 (e) No prescriber shall be subjected to civil liability arising solely  
2 from authorizing, in accordance with this subdivision, the substitution  
3 by a pharmacist of a generic drug product pursuant to [~~paragraph (e) of~~  
4 ~~subdivision one of~~] section two hundred [~~six~~] eighty-d of the public  
5 health law.

6 § 4. Paragraph (d) of subdivision 6 of section 6810 of the education  
7 law, as added by chapter 913 of the laws of 1986, is amended to read as  
8 follows:

9 (d) No prescriber shall be subjected to civil liability arising solely  
10 from authorizing, in accordance with this subdivision, the substitution  
11 by a pharmacist of a generic drug product pursuant to [~~paragraph (e) of~~  
12 ~~subdivision one of~~] section two hundred [~~six~~] eighty-d of the public  
13 health law.

14 § 5. Paragraph (b) of subdivision 1 of section 6816-a of the education  
15 law, as added by chapter 776 of the laws of 1977, is amended to read as  
16 follows:

17 (b) The substituted drug product is contained in the list of generic  
18 drug products established pursuant to [~~paragraph (e) of subdivision one~~  
19 ~~of~~] section [~~two hundred six~~] two hundred eighty-d of the public health  
20 law; and

21 § 6. This act shall take effect on the ninetieth day after it shall  
22 have become a law; provided that the amendments to paragraph (e) of  
23 subdivision 6 of section 6810 of the education law, made by section  
24 three of this act, shall not affect the expiration of such paragraph,  
25 when upon such date the provisions of section four of this act shall  
26 take effect. Effective immediately, the addition, amendment and/or  
27 repeal of any rule or regulation necessary for the implementation of  
28 this act on its effective date are authorized to be made and completed  
29 on or before such effective date.