STATE OF NEW YORK

5289

2021-2022 Regular Sessions

IN ASSEMBLY

February 12, 2021

Introduced by M. of A. ANGELINO -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the education law, in relation to authorizing the substitution of brand name prescription drugs by a pharmacist

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

Section 1. Paragraph (a) of subdivision 6 of section 6810 of the education law, as amended by chapter 590 of the laws of 2011, 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 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

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

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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. **Notwithstanding any other provision of this section, or of any other law, if a generic drug product is available, a pharmacist may inform the patient that the brand name drug is also available and that the price of such brand name drug will exceed the price of the generic drug product. Upon the request of the patient, the pharmacist may dispense the brand name product at the regular price. In such instances the pharmacist must record the date and hour of the patient request on the back of the prescription and keep a copy of all such prescriptions.**

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately any rule or regulation necessary for the timely implementation of this act on its effective date may be promulgated on or before such date.