

# STATE OF NEW YORK

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5289

2021-2022 Regular Sessions

## IN ASSEMBLY

February 12, 2021

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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:

1 Section 1. Paragraph (a) of subdivision 6 of section 6810 of the  
2 education law, as amended by chapter 590 of the laws of 2011, is amended  
3 to read as follows:

4 (a) Every prescription written in this state by a person authorized to  
5 issue such prescription shall be on prescription forms containing one  
6 line for the prescriber's signature. The prescriber's signature shall  
7 validate the prescription. Every electronic prescription shall provide  
8 for the prescriber's electronic signature, which shall validate the  
9 electronic prescription. Imprinted conspicuously on every prescription  
10 written in this state in eight point upper case type immediately below  
11 the signature line shall be the words: "THIS PRESCRIPTION WILL BE FILLED  
12 GENERICALLY UNLESS PRESCRIBER WRITES 'd a w' IN THE BOX BELOW". Unless  
13 the prescriber writes d a w in such box in the prescriber's own hand-  
14 writing or, in the case of electronic prescriptions, inserts an elec-  
15 tronic direction to dispense the drug as written, the prescriber's  
16 signature or electronic signature shall designate approval of substi-  
17 tution by a pharmacist of a drug product pursuant to paragraph (o) of  
18 subdivision one of section two hundred six of the public health law. No  
19 other letters or marks in such box shall prohibit substitution. No  
20 prescription forms used or intended to be used by a person authorized to  
21 issue a prescription shall have 'd a w' preprinted in such box. Such box  
22 shall be placed directly under the signature line and shall be three-  
23 quarters inch in length and one-half inch in height, or in comparable  
24 form for an electronic prescription as may be specified by regulation of  
25 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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1 point type the words "Dispense As Written". Notwithstanding any other  
2 provision of law, no state official, agency, board or other entity shall  
3 promulgate any regulation or guideline modifying those elements of the  
4 prescription form's contents specified in this subdivision. To the  
5 extent otherwise permitted by law, a prescriber may modify only those  
6 elements of the prescription form's contents not specified in this  
7 subdivision. Notwithstanding any other provision of this section or any  
8 other law, when a generic drug is not available and the brand name drug  
9 originally prescribed is available and the pharmacist agrees to dispense  
10 the brand name product for a price that will not exceed the price that  
11 would have been charged for the generic substitute had it been avail-  
12 able, substitution of a generic drug product will not be required. If  
13 the generic drug product is not available and a medical emergency situ-  
14 ation, which for purposes of this section is defined as any condition  
15 requiring alleviation of severe pain or which threatens to cause disa-  
16 bility or take life if not promptly treated, exists, then the pharmacist  
17 may dispense the brand name product at his regular price. In such  
18 instances the pharmacist must record the date, hour and nature of the  
19 medical emergency on the back of the prescription and keep a copy of all  
20 such prescriptions. Notwithstanding any other provision of this  
21 section, or of any other law, if a generic drug product is available, a  
22 pharmacist may inform the patient that the brand name drug is also  
23 available and that the price of such brand name drug will exceed the  
24 price of the generic drug product. Upon the request of the patient, the  
25 pharmacist may dispense the brand name product at the regular price. In  
26 such instances the pharmacist must record the date and hour of the  
27 patient request on the back of the prescription and keep a copy of all  
28 such prescriptions.

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