STATE OF NEW YORK

10668

IN ASSEMBLY

July 22, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Ramos) -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to requiring patient consent when substituting medication

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

Section 1. Subdivisions 1, 2 and 3 of section 6816-a of the education law, subdivisions 1 and 2 as added by chapter 776 of the laws of 1977, paragraph (a) of subdivision 1 as amended by chapter 913 of the laws of 1986, and subdivision 3 as added by chapter 357 of the laws of 2017, are amended to read as follows:

1. A pharmacist shall substitute a less expensive drug product containing the same active ingredients, dosage form and strength as the drug product prescribed, ordered or demanded, provided that the following conditions are met:

(a) The prescription is written on a form which meets the requirements of subdivision six of section sixty-eight hundred ten of this article and the prescriber does not prohibit substitution, or in the case of oral prescriptions, the prescriber must expressly state whether substitution is to be permitted or prohibited. Any oral prescription that does not include such an express statement shall not be filled; and

(b) The substituted drug product is contained in the list of drug products established pursuant to paragraph (o) of subdivision one of section two hundred six of the public health law; [~~and~~]

(c) The pharmacist shall indicate on the label affixed to the immediate container in which the drug is sold or dispensed the name and strength of the drug product and its manufacturer unless the prescriber specifically states otherwise. The pharmacist shall record on the prescription form the brand name or the name of the manufacturer of the drug product dispensed**; and**

(d) The patient who shall receive the drug product gives express written consent that the pharmacist may substitute such drug product for a less expensive drug product.

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

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2. In the event a patient chooses to have a prescription filled by an out of state dispenser, [~~the laws of that state shall prevail~~] **such out-of-state dispenser shall receive express written consent from the patient who shall receive the drug product that such drug product may be substituted for a less expensive drug product**.

3. A pharmacist shall substitute a less expensive biological product for a prescribed biological product provided that all of the following conditions are met:

(a) the substituted biological product is either an interchangeable biological product for the prescribed product or the substituted biological product is one for which the prescribed product is an interchangeable biological product;

(b) the prescriber does not designate that a substitution is prohibited as described in subdivision six of section sixty-eight hundred ten of this article; [~~and~~]

(c) the pharmacist indicates on the label affixed to the immediate container in which the biological product is sold or distributed the name and strength of the product and its manufacturer unless the prescriber specifically states otherwise**; and**

(d) the patient who shall receive the biological product gives express written consent that the pharmacist may substitute such biological product for a less expensive biological product.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.