

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 Assem-
bly, do enact as follows:

1 Section 1. Subdivisions 1, 2 and 3 of section 6816-a of the education
2 law, subdivisions 1 and 2 as added by chapter 776 of the laws of 1977,
3 paragraph (a) of subdivision 1 as amended by chapter 913 of the laws of
4 1986, and subdivision 3 as added by chapter 357 of the laws of 2017, are
5 amended to read as follows:

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

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

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

19 (c) The pharmacist shall indicate on the label affixed to the immedi-
20 ate container in which the drug is sold or dispensed the name and
21 strength of the drug product and its manufacturer unless the prescriber
22 specifically states otherwise. The pharmacist shall record on the
23 prescription form the brand name or the name of the manufacturer of the
24 drug product dispensed; and

25 (d) The patient who shall receive the drug product gives express writ-
26 ten consent that the pharmacist may substitute such drug product for a
27 less expensive drug product.

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

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

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

9 (a) the substituted biological product is either an interchangeable
10 biological product for the prescribed product or the substituted biolog-
11 ical product is one for which the prescribed product is an interchangea-
12 ble biological product;

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

16 (c) the pharmacist indicates on the label affixed to the immediate
17 container in which the biological product is sold or distributed the
18 name and strength of the product and its manufacturer unless the pres-
19 criber specifically states otherwise; and

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

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