§ 6816-a. When substitution is required. 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.

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.

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.

4. (a) Within five business days following the dispensing of a substituted biological product, the dispensing pharmacist or the pharmacist's designee shall communicate to the prescriber the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed to the prescriber (i) by making an entry that is electronically accessible to the prescriber through an interoperable electronic medical records system, an electronic prescribing technology or a pharmacy record; or (ii) by using facsimile, electronic transmission or other electronic means. If an electronic means described in this paragraph is not available to the pharmacist at the time of communication, the dispensing pharmacist or the pharmacist's designee may communicate the information by telephone.

(b) Communication under paragraph (a) of this subdivision shall not be required where:

(i) there is no FDA-approved interchangeable biological product for the product prescribed; or

(ii) a refill prescription is not changed from the product dispensed on the prior filling of the prescription.

5. The department shall maintain a link on its web site to the current list of all biological products determined by the Federal Food and Drug Administration to be an interchangeable biological product for a specific biological product.