



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 16, 2016

Dear Practitioners and Pharmacists:

This letter is to inform you of a blanket waiver with respect to the electronic prescribing requirements, pursuant to Public Health Law (PHL) § 281 and Education Law § 6810, that go into effect on March 27, 2016, for exceptional circumstances in which electronic prescribing cannot be performed due to limitations in software functionality. The exceptional circumstances for which this waiver applies are set forth in this letter.

The National Council for Prescription Drug Programs (NCPDP) is a not-for-profit American National Standards Institute (ANSI) - Accredited Standards Development Organization that represents virtually every sector of the pharmacy services industry specific to the transfer of data relation. The standards developed by NCPDP allow only a limited number of characters in the prescription directions to the patient, including, but not limited to, taper doses, insulin sliding scales, and alternating drug doses.

Similarly, for compound drugs, no unique identifier is available for the entire formulation. Typing the entire compound on one text line may lead to prescribing or dispensing errors, potentially compromising patient safety.

Further, the New York State Department of Health (Department) is mindful that practitioners are required to issue non-patient specific prescriptions in certain instances, and that such prescriptions cannot be properly entered into the electronic prescription program.

Also, the Department acknowledges that in a nursing home/residential health care facility setting, electronic prescribing may not be available due to technological or economic issues or other exceptional circumstances, including a heavy reliance upon oral communications with the prescriber and pharmacy.

For these reasons, pursuant to the authority in Public Health Law § 281(3), I waive the following exceptional circumstances from the requirements of electronic prescribing:

1. any practitioner prescribing a controlled or non-controlled substance, containing two (2) or more products, which is compounded by a pharmacist;
2. any practitioner prescribing a controlled or non-controlled substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion;
3. any practitioner prescribing a controlled or non-controlled substance that contains long or complicated directions;

4. any practitioner prescribing a controlled or non-controlled substance that requires a prescription to contain certain elements required by the federal Food and Drug Administration (FDA) that are not able to be accomplished with electronic prescribing;
5. any practitioner prescribing a controlled or non-controlled substance under approved protocols under expedited partner therapy, collaborative drug management or in response to a public health emergency that would allow a non-patient specific prescription;
6. any practitioner prescribing an opioid antagonist that would allow a non-patient specific prescription;
7. any practitioner prescribing a controlled or non-controlled substance under a research protocol;
8. a practitioner prescribing a controlled or non-controlled substance either through an Official New York State Prescription form or an oral prescription communicated to a pharmacist serving as a vendor of pharmaceutical services, by an agent who is a health care practitioner, for patients in nursing homes and residential health care facilities as defined in section twenty-eight hundred one of the public health law.
9. a pharmacist dispensing controlled and non-controlled substance compounded prescriptions, prescriptions containing long or complicated directions, and prescriptions containing certain elements required by the FDA or any other governmental agency that are not able to be accomplished with electronic prescribing;
10. a pharmacist dispensing prescriptions issued under a research protocol, or under approved protocols for expedited partner therapy, or for collaborative drug management;
11. a pharmacist dispensing non-patient specific prescriptions, including opioid antagonists, or prescriptions issued in response to a public health emergency issued; and
12. a pharmacist serving as a vendor of pharmaceutical services dispensing a controlled or non-controlled substance through an Official New York State Prescription form or an oral prescription communicated by an agent who is a health care practitioner, for patients in nursing homes and residential health care facilities as defined in section twenty-eight hundred one of the public health law.

Practitioners issuing prescriptions in the above-listed exceptional circumstances may either use the Official New York State Prescription Form or issue an oral prescription; provided, however, that oral prescriptions remain subject to § 3334 and § 3337 of the PHL, which provide for oral prescriptions of controlled substances in emergencies and for other limited purposes, and subject to § 6810 of the Education Law. Pharmacists may dispense prescriptions issued on the Official New York State Prescription Form or oral prescriptions in the above-listed exceptional circumstances.

This waiver is hereby issued for the above-listed exceptional circumstances and shall be effective until March 26, 2017. Before March 26, 2017, I will determine whether the software available for electronic prescribing has sufficient functionality to accommodate these exceptional circumstances and whether New York's nursing homes/residential health care facilities are better prepared to comply with e-prescribing requirements.

This blanket waiver shall not affect general waivers issued to practitioners pursuant to Public Health Law § 281.

Sincerely,

A handwritten signature in black ink that reads "Howard Zucker M.D." in a cursive style.

Howard A. Zucker, M.D., J.D.
Commissioner of Health