



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 2, 2017

Dear Practitioners and Pharmacists:

This letter is to inform you of a blanket waiver of the electronic prescribing requirements of Public Health Law (PHL) § 281 and Education Law § 6810, for certain exceptional circumstances in which electronic prescribing cannot be performed due to limitations in software functionality. As of March 26, 2017, this blanket waiver replaces and supersedes my prior blanket waiver, issued by letter dated March 16, 2016.

The Department recognizes that the standards developed by the National Council for Prescription Drug Programs (NCPDP), as adopted by the Centers for Medicare and Medicaid Services, have been continuously revised since they were first published in 2005 but still do not address every prescribing scenario. The current standards 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 Department is mindful that practitioners must issue non-patient specific prescriptions in certain instances, and that such prescriptions cannot be properly entered into the electronic prescription software.

For these reasons, pursuant to my authority in PHL § 281(3), I hereby continue to 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 for expedited partner therapy, collaborative drug

management or comprehensive medication 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 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;
9. a pharmacist dispensing prescriptions issued under a research protocol, or under approved protocols for expedited partner therapy, or for collaborative drug management or comprehensive medication management; and
10. a pharmacist dispensing non-patient specific prescriptions, including opioid antagonists, or prescriptions issued in response to a declared public health emergency.

This waiver is hereby issued for the ten above-listed exceptional circumstances and shall be effective from March 26, 2017, until March 25, 2018. Before March 25, 2018, I will determine whether the software available for electronic prescribing has sufficient functionality to accommodate each of these exceptional circumstances.

The Department further acknowledges that, while many nursing home/residential health care facilities have adopted electronic prescribing, there remain some facilities in which electronic prescribing may not be currently possible 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 my authority in PHL § 281(3), and as directed by Governor Cuomo in Veto Message #218 of 2016, I hereby continue to waive from the requirements of electronic prescribing:

1. 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 by PHL § 2801; and
2. 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 by PHL § 2801.

This waiver is hereby issued for the above two exceptional circumstances involving nursing homes and residential health care facilities, as defined by PHL § 2801, and shall be effective from March 26 through October 31, 2017.

Practitioners issuing prescriptions in all of the above-listed exceptional circumstances may use either the Official New York State Prescription Form or issue an oral prescription, provided, however, that oral prescriptions remain subject to PHL §§ 3334 and 3337, 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 continue to dispense prescriptions issued on the Official New York State Prescription Form or oral prescriptions in all of the above-listed exceptional circumstances.

The above blanket waivers shall not affect other general waivers the Department issues to practitioners pursuant to PHL § 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