

ASSEMBLY, No. 5141

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 14, 2020

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman ANNETTE CHAPARRO

District 33 (Hudson)

SYNOPSIS

Requires all prescriptions be transmitted electronically, subject to certain exceptions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/7/2021)

1 AN ACT concerning electronic prescriptions, amending various
2 parts of the statutory law, and supplementing Title 45 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 8 of P.L.1977, c.240 (C.24:6E-7) is amended to read as
9 follows:

10 8. Every prescription blank shall be imprinted with the words,
11 "substitution permissible" and "do not substitute" and shall contain
12 space for the physician's or other authorized prescriber's initials next to
13 the chosen option, and each prescription issued electronically using an
14 electronic health records system shall include a section for the
15 physician or other authorized prescriber to explicitly indicate that
16 substitution is permissible for that prescription or that substitution is
17 not permissible for that prescription. Notwithstanding any other law,
18 unless the physician or other authorized prescriber explicitly **states**
19 indicates that there shall be no substitution when transmitting **an**
20 **oral** a prescription or, in the case of a written prescription, indicates
21 that there shall be no substitution by initialing the prescription blank
22 next to "do not substitute," a different brand name or nonbrand name
23 drug product of the same established name shall be dispensed by a
24 pharmacist if such different brand name or nonbrand name drug
25 product shall reflect a lower cost to the consumer and is contained in
26 the latest list of interchangeable drug products published by the
27 council; provided, however, where the prescriber indicates
28 "substitution permissible, and requests the pharmacist to notify **him**
29 the prescriber of the substitution," the pharmacist shall transmit notice,
30 either orally **or** , by written notice to be transmitted no later than the
31 end of the business day using an electronic health records system, or
32 by such other means as may authorized by the Director of the Division
33 of Consumer Affairs in the Department of Law and Public Safety, to
34 the prescriber specifying the drug product actually dispensed and the
35 name of the manufacturer thereof. However, no drug interchange shall
36 be made unless a savings to the consumer results, and the pharmacist
37 passes such savings on to the consumer in full by charging no more
38 than the regular and customary retail price for the drug to be
39 substituted. For prescriptions filled other than by mail, the consumer
40 may, if a substitution is indicated and prior to having **his** the
41 consumer's prescription filled, request the pharmacist or **his** the
42 pharmacist's agent to inform **him** the consumer of the price savings
43 that would result from substitution. If the consumer is not satisfied
44 with said price savings **he** the consumer may, upon request, be

EXPLANATION – Matter enclosed in bold-faced brackets **thus** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 dispensed the drug product prescribed by the physician. The
2 pharmacist shall make a notation of such request upon the prescription
3 blank, in the case of a prescription issued using a New Jersey
4 Prescription Blank, and in the patient's electronic health record, in the
5 case of a prescription issued electronically using an electronic health
6 records system.

7 (cf: P.L.1977, c.240, s.8)

8
9 2. Section 15 of P.L.1970, c.226 (C.24:21-15) is amended to read
10 as follows:

11 15. Prescriptions. a. Except when dispensed directly in good faith
12 by a practitioner, other than a pharmacist, in the course of **【his】** the
13 practitioner's professional practice only, to an ultimate user, no
14 controlled dangerous substance included in Schedule II, which is a
15 prescription drug as defined in section 2 of P.L.2003, c.280 (C.45:14-
16 41), may be dispensed without **【the written】** a prescription **【of】** issued
17 by a practitioner **【;** provided that in emergency situations, as
18 prescribed by the division by regulation, such drug may be dispensed
19 upon oral prescription reduced promptly to writing and filed by the
20 pharmacist, if such oral prescription is authorized by federal law**】** in
21 accordance with the requirements of section 8 of P.L. , c. (C.)
22 (pending before the Legislature as this bill). Prescriptions shall be
23 retained in conformity with the requirements of section 13 of
24 P.L.1970, c.226 (C.24:21-13). No prescription for a Schedule II
25 substance may be refilled.

26 b. Except when dispensed directly in good faith by a practitioner,
27 other than a pharmacist, in the course of **【his】** the practitioner's
28 professional practice only, to an ultimate user, no controlled dangerous
29 substance included in Schedules III and IV which is a prescription
30 drug as defined in section 2 of P.L.2003, c.280 (C.45:14-41) may be
31 dispensed without a **【written or oral】** prescription issued by a
32 practitioner in accordance with the requirements of section 8 of
33 P.L. , c. (C.) (pending before the Legislature as this bill).
34 Such prescription may not be filled or refilled more than six months
35 after the date thereof or be refilled more than five times after the date
36 of the prescription, unless renewed by the practitioner.

37 c. No controlled dangerous substance included in Schedule V
38 may be distributed or dispensed other than for a valid and accepted
39 medical purpose.

40 d. A practitioner other than a veterinarian who prescribes a
41 controlled dangerous substance in good faith and in the course of **【his】**
42 the practitioner's professional practice may administer the same or
43 cause the same to be administered by a nurse or intern under **【his】** the
44 practitioner's direction and supervision.

45 e. A veterinarian who prescribes a controlled dangerous
46 substance not for use by a human being in good faith and in the course
47 of **【his】** the veterinarian's professional practice may administer the

1 same or cause the same to be administered by an assistant or orderly
2 under **his** the veterinarian's direction and supervision.

3 f. A person who has obtained a controlled dangerous substance
4 from the prescribing practitioner for administration to a patient during
5 the absence of the practitioner shall return to the practitioner any
6 unused portion of the substance when it is no longer required by the
7 patient or when its return is requested by the practitioner.

8 g. Whenever it appears to the division that a drug not considered
9 to be a prescription drug under existing State law should be so
10 considered because of its abuse potential, it shall so advise the New
11 Jersey State Board of Pharmacy and furnish to it all available data
12 relevant thereto.

13 (cf: P.L.2007, c.244, s.14)

14
15 3. Section 10 of P.L.1991, c.377 (C.45:11-49) is amended to read
16 as follows:

17 10. a. In addition to all other tasks which a registered professional
18 nurse may, by law, perform, an advanced practice nurse may manage
19 preventive care services and diagnose and manage deviations from
20 wellness and long-term illnesses, consistent with the needs of the
21 patient and within the scope of practice of the advanced practice nurse,
22 by:

23 (1) initiating laboratory and other diagnostic tests;

24 (2) prescribing or ordering medications and devices, as authorized
25 by subsections b. and c. of this section; and

26 (3) prescribing or ordering treatments, including referrals to other
27 licensed health care professionals, and performing specific procedures
28 in accordance with the provisions of this subsection.

29 b. An advanced practice nurse may order medications and devices
30 in the inpatient setting, subject to the following conditions:

31 (1) the collaborating physician and advanced practice nurse shall
32 address in the joint protocols whether prior consultation with the
33 collaborating physician is required to initiate an order for a controlled
34 dangerous substance;

35 (2) the order is written in accordance with standing orders or joint
36 protocols developed in agreement between a collaborating physician
37 and the advanced practice nurse, or pursuant to the specific direction
38 of a physician;

39 (3) the advanced practice nurse authorizes the order by signing the
40 nurse's own name, printing the name and certification number, and
41 printing the collaborating physician's name;

42 (4) the physician is present or readily available through electronic
43 communications;

44 (5) the charts and records of the patients treated by the advanced
45 practice nurse are reviewed by the collaborating physician and the
46 advanced practice nurse within the period of time specified by rules
47 adopted by the Commissioner of Health pursuant to section 13 of
48 P.L.1991, c.377 (C.45:11-52);

1 (6) the joint protocols developed by the collaborating physician
2 and the advanced practice nurse are reviewed, updated, and signed at
3 least annually by both parties; and

4 (7) the advanced practice nurse has completed six contact hours of
5 continuing professional education in pharmacology related to
6 controlled substances, including pharmacologic therapy, addiction
7 prevention and management, and issues concerning prescription opioid
8 drugs, including responsible prescribing practices, alternatives to
9 opioids for managing and treating pain, and the risks and signs of
10 opioid abuse, addiction, and diversion, in accordance with regulations
11 adopted by the New Jersey Board of Nursing. The six contact hours
12 shall be in addition to New Jersey Board of Nursing pharmacology
13 education requirements for advanced practice nurses related to initial
14 certification and recertification of an advanced practice nurse as set
15 forth in N.J.A.C.13:37-7.2.

16 c. An advanced practice nurse may prescribe medications and
17 devices in all other medically appropriate settings, subject to the
18 following conditions:

19 (1) the collaborating physician and advanced practice nurse shall
20 address in the joint protocols whether prior consultation with the
21 collaborating physician is required to initiate a prescription for a
22 controlled dangerous substance;

23 (2) the prescription is written in accordance with standing orders
24 or joint protocols developed in agreement between a collaborating
25 physician and the advanced practice nurse, or pursuant to the specific
26 direction of a physician;

27 (3) the advanced practice nurse **【writes】** issues the prescription
28 **【on a New Jersey Prescription Blank pursuant to P.L.2003, c.280**
29 **(C.45:14-40 et seq.)】** in accordance with section 8 of P.L.____,
30 c. (C.____) (pending before the Legislature as this bill), signs the
31 nurse's own name to the prescription and **【prints】** includes on the
32 prescription the nurse's name and certification number;

33 (4) the prescription is dated and includes the name of the patient
34 and the name, address, and telephone number of the collaborating
35 physician;

36 (5) the physician is present or readily available through electronic
37 communications;

38 (6) the charts and records of the patients treated by the advanced
39 practice nurse are periodically reviewed by the collaborating physician
40 and the advanced practice nurse;

41 (7) the joint protocols developed by the collaborating physician
42 and the advanced practice nurse are reviewed, updated, and signed at
43 least annually by both parties; and

44 (8) the advanced practice nurse has completed six contact hours of
45 continuing professional education in pharmacology related to
46 controlled substances, including pharmacologic therapy, addiction
47 prevention and management, and issues concerning prescription opioid
48 drugs, including responsible prescribing practices, alternatives to

1 opioids for managing and treating pain, and the risks and signs of
2 opioid abuse, addiction, and diversion, in accordance with regulations
3 adopted by the New Jersey Board of Nursing. The six contact hours
4 shall be in addition to New Jersey Board of Nursing pharmacology
5 education requirements for advanced practice nurses related to initial
6 certification and recertification of an advanced practice nurse as set
7 forth in N.J.A.C.13:37-7.2.

8 d. The joint protocols employed pursuant to subsections b. and c.
9 of this section shall conform with standards adopted by the Director of
10 the Division of Consumer Affairs pursuant to section 12 of P.L.1991,
11 c.377 (C.45:11-51) or section 10 of P.L.1999, c.85 (C.45:11-49.2), as
12 applicable.

13 e. (Deleted by amendment, P.L.2004, c.122.)

14 f. An attending advanced practice nurse may determine and
15 certify the cause of death of the nurse's patient and execute the death
16 certification pursuant to R.S.26:6-8 if no collaborating physician is
17 available to do so and the nurse is the patient's primary caregiver.

18 g. An advanced practice nurse may authorize qualifying patients
19 for the medical use of cannabis and issue written instructions for
20 medical cannabis to registered qualifying patients, subject to the
21 following conditions:

22 (1) the collaborating physician and advanced practice nurse shall
23 address in the joint protocols whether prior consultation with the
24 collaborating physician is required to authorize a qualifying patient for
25 the medical use of cannabis or issue written instructions for medical
26 cannabis;

27 (2) the authorization for the medical use of cannabis or issuance of
28 written instructions for cannabis is in accordance with standing orders
29 or joint protocols developed in agreement between a collaborating
30 physician and the advanced practice nurse, or pursuant to the specific
31 direction of a physician;

32 (3) the advanced practice nurse signs the nurse's own name to the
33 authorization or written instruction and prints the nurse's name and
34 certification number;

35 (4) the authorization or written instruction is dated and includes
36 the name of the qualifying patient and the name, address, and
37 telephone number of the collaborating physician;

38 (5) the physician is present or readily available through electronic
39 communications;

40 (6) the charts and records of qualifying patients treated by the
41 advanced practice nurse are periodically reviewed by the collaborating
42 physician and the advanced practice nurse;

43 (7) the joint protocols developed by the collaborating physician
44 and the advanced practice nurse are reviewed, updated, and signed at
45 least annually by both parties; and

46 (8) the advanced practice nurse complies with the requirements for
47 authorizing qualifying patients for the medical use of cannabis and for

1 issuing written instructions for medical cannabis established pursuant
2 to P.L.2009, c.307 (C.24:6I-1 et al.).
3 (cf: P.L.2019, c.153, s.47)
4

5 4. Section 16 of P.L.2003, c.280 (C.45:14-55) is amended to read
6 as follows:

7 16. a. **【A】** Whenever a practitioner practicing in this State issues
8 a prescription for a controlled dangerous substance, prescription
9 legend drug, or other prescription item, the practitioner shall issue the
10 prescription electronically using an electronic health records system,
11 except that, if the prescription is not required to be transmitted by
12 electronic means under subsection b. of section 8 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill), the
14 practitioner shall 【use】 issue the prescription using a non-
15 reproducible, non-erasable safety paper New Jersey Prescription
16 **【Blanks】 Blank** bearing that practitioner's license number 【whenever
17 the practitioner issues prescriptions for controlled dangerous
18 substances, prescription legend drugs or other prescription items】 or
19 in such other manner as may be authorized by the Director of the
20 Division of Consumer Affairs in the Department of Law and Public
21 Safety. 【The prescription】 Prescription blanks shall be secured from a
22 vendor approved by the Division of Consumer Affairs in the
23 Department of Law and Public Safety.

24 b. A licensed practitioner practicing in this State shall maintain a
25 record of the receipt of New Jersey Prescription Blanks. The
26 practitioner shall notify the Office of Drug Control in the Division of
27 Consumer Affairs as soon as possible but no later than 72 hours of
28 being made aware that any New Jersey Prescription Blank in the
29 practitioner's possession has been stolen. Upon receipt of notification,
30 the Office of Drug Control shall take appropriate action, including
31 notification to the Department of Human Services and the Attorney
32 General.

33 (cf: P.L.2003, c.280, s.16)
34

35 5. Section 17 of P.L.2003, c.280 (C.45:14-56) is amended to read
36 as follows:

37 17. a. Prescriptions issued by a health care facility licensed
38 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall be issued
39 electronically using an electronic health records system, except that, if
40 the prescription is not required to be transmitted by electronic means
41 under subsection b. of section 8 of P.L. , c. (C.) (pending
42 before the Legislature as this bill), the prescription shall be written on
43 a non-reproducible, non-erasable safety paper New Jersey Prescription
44 **【Blanks】 Blank** or in such other manner as may be authorized by the
45 Director of the Division of Consumer Affairs in the Department of
46 Law and Public Safety. 【The prescription】 Prescription blanks shall
47 be secured from a vendor approved by the Division of Consumer

1 Affairs in the Department of Law and Public Safety. The New Jersey
2 Prescription Blanks shall bear the unique provider number assigned to
3 that health care facility for the issuing of prescriptions for controlled
4 dangerous substances, prescription legend drugs or other prescription
5 items.

6 b. A health care facility shall maintain a record of the receipt of
7 New Jersey Prescription Blanks. The health care facility shall notify
8 the Office of Drug Control in the Division of Consumer Affairs as
9 soon as possible but no later than 72 hours of being made aware that
10 any New Jersey Prescription Blank in the facility's possession has been
11 stolen. Upon receipt of notification, the Office of Drug Control shall
12 take appropriate action including notification to the Department of
13 Human Services and the Attorney General.

14 (cf: P.L.2003, c.280, s.17)

15

16 6. Section 18 of P.L.2003, c.280 (C.45:14-57) is amended to read
17 as follows:

18 18. a. A prescription issued by a practitioner or health care
19 facility licensed in New Jersey shall not be filled by a pharmacist
20 unless the prescription is issued electronically using an electronic
21 health records system, except that, if the prescription that is not
22 required to be transmitted by electronic means under subsection b. of
23 section 8 of P.L. , c. (C.) (pending before the Legislature as
24 this bill), the prescription shall not be filled by a pharmacist unless the
25 prescription is issued on a New Jersey Prescription Blank bearing the
26 practitioner's license number or the unique provider number assigned
27 to a health care facility or in such other manner as may be authorized
28 by the Director of the Division of Consumer Affairs in the Department
29 of Law and Public Safety.

30 b. Notwithstanding the provisions of subsection a. of this section
31 to the contrary, a practitioner or health care facility licensed in New
32 Jersey may utilize an electronic health record program to imprint the
33 practitioner's name and license number or the unique provider number
34 assigned to a health care facility on a blank New Jersey Prescription
35 Blank for transmission to a pharmacist, provided that:

36 (1) any other requirements under section 20 of P.L.2003, c.280
37 (C.45:14-59) and any regulations adopted by the Director of the
38 Division of Consumer Affairs in the Department of Law and Public
39 Safety concerning New Jersey Prescription Blanks are met; and

40 (2) the electronic health record program will imprint on the blank
41 form all such identifying information about the prescriber as
42 is required by regulation of the Director of the Division of Consumer
43 Affairs.

44 (cf: P.L.2009, c.297, s.1)

45

46 7. Section 19 of P.L.2003, c.280 (C.45:14-58) is amended to
47 read as follows:

1 19. a. **【Nothing contained in this act shall preclude a**
2 practitioner from transmitting to a pharmacist by telephone or
3 electronic means a prescription, as otherwise authorized by law, if
4 that practitioner provides the practitioner's Drug Enforcement
5 Administration registration number and the practitioner's license
6 number, or any other federally identified number, as appropriate, to
7 the pharmacist at the time the practitioner transmits the
8 prescription.】 (Deleted by amendment, P.L. _____, c. _____) (pending
9 before the Legislature as this bill)

10 b. Except as may be otherwise permitted by law, no
11 prescription for any Schedule II controlled dangerous substance
12 shall be **【given or】** transmitted to pharmacists, in any other manner,
13 than in writing signed by the practitioner **【giving or】** transmitting
14 the same consistent with the requirements of section 8 of P.L. _____,
15 c. (C. _____) (pending before the Legislature as this bill), nor shall
16 such prescription be renewed or refilled. The requirement in this
17 subsection that a prescription for any controlled dangerous
18 substance be **【given or】** transmitted to pharmacists in writing
19 signed by the practitioner consistent with the requirements of
20 section 8 of P.L. _____, c. (C. _____) (pending before the Legislature
21 as this bill) shall not apply to a prescription for a Schedule II drug if
22 that prescription is transmitted or prepared in compliance with
23 federal and State regulations.

24 c. (1) Each vendor that sells, leases, or licenses for use an
25 electronic health records system that is used to electronically
26 transmit prescriptions in this State on the effective date of P.L.2017,
27 c.338 shall ensure that the system meets all federal requirements for
28 the system to accept, process, and transmit prescriptions for
29 Schedule II controlled dangerous substances no later than one year
30 after the effective date of P.L.2017, c.338 as a condition of
31 continuing to sell, lease, or license for use the electronic health
32 records system in this State. Each vendor that commences selling,
33 leasing, or licensing for use an electronic health records system that
34 is used to electronically transmit prescriptions in this State after the
35 effective date of P.L.2017, c.338 shall ensure that the system meets
36 all federal requirements for the system to accept, process, and
37 transmit prescriptions for Schedule II controlled dangerous
38 substances as a condition of selling, leasing, or licensing for use the
39 electronic health records system in this State.

40 (2) The requirements of paragraph (1) of this subsection shall
41 not apply to a telemedicine or telehealth organization, as that term
42 is defined in section 1 of P.L.2017, c.117 (C.45:1-61), that
43 exclusively provides telehealth and telemedicine services.
44 (cf: P.L.2017, c.338, s.1)

45

46 8. (New section) a. Except as provided in subsections b. and
47 c. of this section, no prescription for a controlled dangerous

1 substance, prescription legend drug, or other prescription item shall
2 be transmitted to a pharmacist by a practitioner in any other manner
3 than by electronic means using an electronic health records system.

4 b. The requirement that a prescription for a controlled
5 dangerous substance, prescription legend drug, or other prescription
6 item be transmitted electronically using an electronic health records
7 system shall not apply to:

8 (1) a veterinarian;

9 (2) a practitioner administering a controlled dangerous
10 substance, prescription legend drug, or other prescription item
11 directly to a patient;

12 (3) a practitioner prescribing a controlled dangerous substance,
13 prescription legend drug, or other prescription item to be dispensed
14 by an institutional pharmacy, as defined in N.J.A.C.13:39-9.2;

15 (4) a practitioner prescribing a controlled dangerous substance,
16 prescription legend drug, or other prescription item to a patient
17 under the care of a hospice;

18 (5) a situation in which the electronic prescribing system used
19 by the practitioner is not operational or a situation in which the
20 system cannot be accessed by the practitioner due to a temporary
21 technological or electrical failure;

22 (6) a situation in which the patient requests the prescription be
23 transmitted to a pharmacy that does not possess the means to
24 receive and process electronically transmitted prescriptions; or

25 (7) a practitioner who has been granted a waiver due to
26 technological limitations that are not reasonably within the control
27 of the practitioner, or other exceptional circumstances demonstrated
28 by the practitioner, pursuant to a process established in regulation,
29 and in the discretion of the Director of the Division of Consumer
30 Affairs in the Department of Law and Public Safety.

31 c. If, pursuant to subsection b. of this section, a prescription for
32 a controlled dangerous substance, prescription legend drug, or other
33 prescription item is not required to be transmitted electronically
34 using an electronic health records system, the prescription shall be
35 issued on a New Jersey Prescription Blank or in such other manner
36 as may be authorized by the director.

37

38 9. The Director of the Division of Consumer Affairs in the
39 Department of Law and Public Safety shall, pursuant to the
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.), adopt rules and regulations as may be necessary to implement
42 the provisions of this act.

43

44 10. This act shall take effect one year after the date of
45 enactment, except that the Director of the Division of Consumer
46 Affairs in the Department of Law and Public Safety may take any
47 administrative action in advance thereof as shall be necessary for
48 the implementation of this act.

STATEMENT

This bill requires that every prescription for a controlled dangerous substance, prescription legend drug, or other prescription item be transmitted electronically using an electronic health records system. This requirement will take effect one year after the date of enactment.

The electronic prescription requirement will not apply to: a veterinarian; a practitioner administering a prescription drug or item directly to a patient; a practitioner prescribing a drug or item to be dispensed by an institutional pharmacy or to a patient in hospice care; a situation in which the electronic prescribing system is not operational or is temporarily inaccessible; a situation in which the patient requests the prescription be transmitted to a pharmacy that is unable to receive and process electronic prescriptions; or a practitioner who has been granted a waiver due to technological limitations or other exceptional circumstances. A prescription that is subject to an exception would be issued on a New Jersey Prescription Blank or in such other manner as may be authorized by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

The bill revises various provisions of the statutory law to reflect the mandatory electronic prescribing requirement.