SENATE, No. 390

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 12/7/2020)

AN ACT concerning electronic prescriptions, revising various parts of the statutory law, and supplementing Title 45 of the Revised Statutes.

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

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

8. Every prescription blank shall be imprinted with the words, "substitution permissible" and "do not substitute" and shall contain space for the physician's or other authorized prescriber's initials next to the chosen option, and each prescription issued electronically using an electronic health records system shall include a section for the physician or other authorized prescriber to explicitly indicate that substitution is permissible for that prescription or that substitution is not permissible for that prescription. Notwithstanding any other law, unless the physician or other authorized prescriber explicitly **[**states**]** indicates that there shall be no substitution when transmitting **[**an oral**]** a prescription or, in the case of a written prescription, indicates that there shall be no substitution by initialing the prescription blank next to "do not substitute," a different brand name or nonbrand name drug product of the same established name shall be dispensed by a pharmacist if such different brand name or nonbrand name drug product shall reflect a lower cost to the consumer and is contained in the latest list of interchangeable drug products published by the council; provided, however, where the prescriber indicates "substitution permissible, and requests the pharmacist to notify **[**him**]** the prescriber of the substitution," the pharmacist shall transmit notice, either orally **[**or**]** , by written notice to be mailed no later than the end of the business day, using an electronic health records system, or by such other means as may authorized by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, to the prescriber specifying the drug product actually dispensed and the name of the manufacturer thereof. However, no drug interchange shall be made unless a savings to the consumer results, and the pharmacist passes such savings on to the consumer in full by charging no more than the regular and customary retail price for the drug to be substituted. For prescriptions filled other than by mail, the consumer may, if a substitution is indicated and prior to having **[**his**]** the consumer's prescription filled, request the pharmacist or **[**his**]** the pharmacist's agent to inform **[**him**]** the consumer of the price savings that would result from substitution.

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.

If the consumer is not satisfied with said price savings [he] the consumer may, upon request, be dispensed the drug product prescribed by the physician. The pharmacist shall make a notation of such request upon the prescription blank, in the case of a prescription issued using a New Jersey Prescription Blank, and in the patient's electronic health record, in the case of a prescription issued electronically using an electronic health records system.
(cf: P.L.1977, c.240, s.8)

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

15. Prescriptions. a. Except when dispensed directly in good faith by a practitioner, other than a pharmacist, in the course of [his] the practitioner's professional practice only, to an ultimate user, no controlled dangerous substance included in Schedule II, which is a prescription drug as defined in section 2 of P.L.2003, c.280 (C.45:14-41), may be dispensed without [the written] a prescription [of] issued by a practitioner[; provided that in emergency situations, as prescribed by the division by regulation, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist, if such oral prescription is authorized by federal law] in accordance with the requirements of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill). Prescriptions shall be retained in conformity with the requirements of section 13 of P.L.1970, c.226 (C.24:21-13). No prescription for a Schedule II substance may be refilled.

b. Except when dispensed directly in good faith by a practitioner, other than a pharmacist, in the course of [his] the practitioner's professional practice only, to an ultimate user, no controlled dangerous substance included in Schedules III and IV which is a prescription drug as defined in section 2 of P.L.2003, c.280 (C.45:14-41) may be dispensed without a [written or oral] prescription issued by a practitioner in accordance with the requirements of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill). Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

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

d. A practitioner other than a veterinarian who prescribes a controlled dangerous substance in good faith and in the course of [his] the practitioner's professional practice may administer the same or cause the same to be administered by a nurse or intern under [his] the practitioner's direction and supervision.

e. A veterinarian who prescribes a controlled dangerous substance not for use by a human being in good faith and in the course of [his] the veterinarian's professional practice may administer the same or cause the same to be administered by an assistant or orderly under [his] the veterinarian's direction and supervision.

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

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

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

3. Section 8 of P.L.2015, c.74 (C.45:1-46.1) is amended to read as follows:

8. a. (1) Except as provided in subsection b. of this section, a practitioner or other person who is authorized by a practitioner to access prescription monitoring information pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46) shall access prescription monitoring information the first time the practitioner or other person prescribes a Schedule II controlled dangerous substance to a new patient for acute or chronic pain. In addition, for any prescription of a Schedule II controlled dangerous substance for a new or current patient for acute or chronic pain which is [written] issued on or after the effective date of P.L.2015, c.74 (C.45:1-46.1 et al.) a practitioner or other authorized person shall access prescription monitoring information on a quarterly basis during the period of time the patient continues to receive such prescriptions.

(2) (a) A pharmacist shall not dispense a Schedule II controlled dangerous substance to any person without first accessing the prescription monitoring information, as authorized pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46), to determine if the person has received other prescriptions that indicate misuse, abuse, or diversion, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any purpose other than the treatment of an existing medical condition, such as for purposes of misuse, abuse, or diversion.

(b) A pharmacist shall not dispense a prescription to a person other than the patient for whom the prescription is intended, unless the person picking up the prescription provides personal

identification to the pharmacist, and the pharmacist, as required by subsection b. of section 25 of P.L.2007, c.244 (C.45:1-45), inputs that identifying information into the Prescription Monitoring Program if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. The provisions of this subparagraph shall not take effect until the director determines that the Prescription Monitoring Program has the technical capacity to accept such information.

b. The provisions of subsection a. of this section shall not apply to:

(1) a veterinarian;

(2) a practitioner or the practitioner's agent administering methadone, or another controlled dangerous substance designated by the director as appropriate for treatment of a patient with a substance **[**abuse**]** use disorder, as interim treatment for a patient on a waiting list for admission to an authorized substance abuse treatment program;

(3) a practitioner administering a controlled dangerous substance directly to a patient;

(4) a practitioner prescribing a controlled dangerous substance to be dispensed by an institutional pharmacy, as defined in N.J.A.C.13:39-9.2;

(5) a practitioner prescribing a controlled dangerous substance in the emergency department of a general hospital, provided that the quantity prescribed does not exceed a five-day supply of the substance;

(6) a practitioner prescribing a controlled dangerous substance to a patient under the care of a hospice;

(7) a situation in which it is not reasonably possible for the practitioner or pharmacist to access the Prescription Monitoring Program in a timely manner, no other individual authorized to access the Prescription Monitoring Program is reasonably available, and the quantity of controlled dangerous substance prescribed or dispensed does not exceed a five-day supply of the substance;

(8) a practitioner or pharmacist acting in compliance with regulations promulgated by the director as to circumstances under which consultation of the Prescription Monitoring Program would result in a patient's inability to obtain a prescription in a timely manner, thereby adversely impacting the medical condition of the patient;

(9) a situation in which the Prescription Monitoring Program is not operational as determined by the division or where it cannot be accessed by the practitioner due to a temporary technological or electrical failure, as set forth in regulation;

(10) a practitioner or pharmacist who has been granted a waiver due to technological limitations that are not reasonably within the control of the practitioner or pharmacist, or other exceptional circumstances demonstrated by the practitioner or pharmacist, pursuant to a process established in regulation, and in the discretion of the director; or

(11) a practitioner who is prescribing a controlled dangerous substance to a patient immediately after the patient has undergone an operation, procedure, or treatment for acute trauma, when less than a 30-day supply is prescribed.

(cf: P.L.2015, c.74, s.8)

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

16. a. **[**A**]** Whenever a practitioner practicing in this State issues a prescription for a controlled dangerous substance, prescription legend drug, or other prescription item, the practitioner shall issue the prescription electronically using an electronic health records system, except that, if the prescription is not required to be transmitted by electronic means under subsection b. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill), the practitioner shall **[**use**]** issue the prescription using a non-reproducible, non-erasable safety paper New Jersey Prescription **[**Blanks**]** Blank bearing that practitioner's license number **[**whenever the practitioner issues prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items**]** 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 prescription**]** Prescription blanks shall be secured from a vendor approved by the Division of Consumer Affairs in the Department of Law and Public Safety.

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

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

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

17. a. Prescriptions issued by a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall be issued

electronically using an electronic health records system, except that, if the prescription is not required to be transmitted by electronic means under subsection b. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill), the prescription shall be written on a non-reproducible, non-erasable safety paper New Jersey Prescription ⟦Blanks⟧ 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 prescription⟧ Prescription blanks shall be secured from a vendor approved by the Division of Consumer Affairs in the Department of Law and Public Safety. The New Jersey Prescription Blanks shall bear the unique provider number assigned to that health care facility for the issuing of prescriptions for controlled dangerous substances, prescription legend drugs or other prescription items.

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

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

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

18. a. A prescription issued by a practitioner or health care facility licensed in New Jersey shall not be filled by a pharmacist unless the prescription is issued electronically using an electronic health records system, except that, if the prescription that is not required to be transmitted by electronic means under subsection b. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill), the prescription shall not be filled by a pharmacist unless the prescription is issued on a New Jersey Prescription Blank bearing the practitioner's license number or the unique provider number assigned to a health care facility 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.

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

(1) any other requirements under section 20 of P.L.2003, c.280 (C.45:14-59) and any regulations adopted by the Director of the

Division of Consumer Affairs in the Department of Law and Public Safety concerning New Jersey Prescription Blanks are met; and

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

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

7. (New section) a. Except as provided in subsections b. and c. of this section, no prescription for a controlled dangerous substance, prescription legend drug, or other prescription item shall be transmitted to a pharmacist by a practitioner in any other manner than by electronic means using an electronic health records system.

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

(1) a veterinarian;

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

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

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

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

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

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

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

8. Section 19 of P.L.2003, c.280 (C.45:14-58) is repealed.

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

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