ASSEMBLY, No. 4114

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED JUNE 2, 2022

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)
Assemblywoman SADAF F. JAFFER
District 16 (Hunterdon, Mercer, Middlesex and Somerset)
Assemblywoman SHANIQUE SPEIGHT
District 29 (Essex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/2/2022)

AN ACT concerning electronic prescriptions, amending 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 transmitted 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. 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

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.

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 8 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 8 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 10 of P.L.1991, c.377 (C.45:11-49) is amended to read as follows:

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

(1) initiating laboratory and other diagnostic tests;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 8 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 8 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 <u>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 8 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</u> on a New Jersey Prescription Blank bearing the practitioner's license number or the unique provider number assigned to a health care facility <u>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</u>.

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

19. a. [Nothing contained in this act shall preclude a practitioner from transmitting to a pharmacist by telephone or electronic means a prescription, as otherwise authorized by law, if that practitioner provides the practitioner's Drug Enforcement Administration registration number and the practitioner's license number, or any other federally identified number, as appropriate, to the pharmacist at the time the practitioner transmits the prescription.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

b. Except as may be otherwise permitted by law, no prescription for any Schedule II controlled dangerous substance shall be [given or] transmitted to pharmacists, in any other manner, than in writing signed by the practitioner [giving or] transmitting the same consistent with the requirements of section 8 of P.L. , c. (C.) (pending before the Legislature as this bill), nor shall such prescription be renewed or refilled. The requirement in this subsection that a prescription for any controlled dangerous substance be [given or] transmitted to pharmacists in writing signed by the practitioner consistent with the requirements of section 8 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not apply to a prescription for a Schedule II drug if that prescription is transmitted or prepared in compliance with federal and State regulations.

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

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

(cf: P.L.2017, c.338, s.1)

8. (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.

9. (New section) 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.