Blog Post

Paper Prescription Pads to go the Way of the Horse and Buggy as Prescribers Will Soon Be Required to Electronically Transmit Prescriptions – Sometimes

July 1, 2019
By Martin R. Dix

Governor Desantis recently signed House Bill 831, which will require certain healthcare practitioners to "electronically transmit prescriptions". Unfortunately, the legislature left this term undefined, creating some ambiguity as to what the law requires. While the legislature likely intended this law to require "electronic prescribing," the statute does not say that, and therefore the term "electronically transmit prescriptions" could also be interpreted to include the common practice of faxing prescriptions and possibly (encrypted) e-mailing as well.

Florida law had already defined the term "electronic prescribing" in Section 408.0611, FS. Electronic prescribing is defined as, at a minimum, the electronic review of the patient's medication history, the electronic generation of the patient's prescription, and the electronic transmission of the patient's prescription to a pharmacy. Section 408.0611, FS.
The requirement that practitioners electronically transmit prescriptions only applies to healthcare practitioners licensed by law to prescribe (MDs, DOs, APRNs, PAs, podiatric physicians, dentists, and optometrists) and who:

Related People

Martin R. Dix

Related Work

Healthcare
Pharmacy, Drugs, and Medical Devices

Related Offices

Tallahassee

Health Law Rx Blog

Akerman Perspectives on the Latest Developments in Healthcare Law

Visit this Akerman Blog

- Maintain an electronic health records (EHR) system; or
- Prescribe medicinal drugs as an owner, employee or contractor of a licensed health care facility or practice that maintains an EHR system

This requirement will apply to practitioners at hospitals, healthcare clinics, ambulatory surgical centers, and other licensed facilities which have EHR systems. It is less clear when it applies to practitioners in unlicensed locations with EHR systems (such as exempt healthcare clinics) as well as other entities that may or may not qualify as a "practice." Clearly, practitioners that use paper medical record systems only will not have to comply.

There are a host of exemptions to the electronic transmission requirement. It does not apply to:

- Dispensing practitioners
- Prescriptions that cannot be transmitted electronically under NCPDP SCRIPT standards
- Practitioners granted a one-year waiver by the Department of Health
- Practitioners that reasonably determine that it would be impractical for the patient to obtain the drug in a timely manner and that it would adversely impact the patient's health
- Practitioners prescribing drugs under a research protocol
- Prescriptions for drugs which FDA requires the prescription to contain elements that may not be included in electronic prescribing
- Prescriptions for hospice patients or residents of nursing homes, or
- Prescriptions when the prescriber or patient determines that it is in the patient's best interests to compare prices among area pharmacies and the prescriber documents this in the medical record

The Department of Health, in consultation with the relevant healthcare practitioner boards, may adopt rules implementing the law.

Pharmacists and pharmacies will generally not know if prescribers have an EHR system or meet one of the eight exemptions, above. Thus, pharmacies will need to continue to treat paper prescriptions as valid after the law becomes effective. Presumably, this law does not affect oral prescriptions called in to a pharmacy, but we may have to wait for guidance on this point.

The law takes effect January 1, 2020, but it applies to practitioners on the earlier of their license renewal or July 1, 2021.

This information is intended to inform clients and friends about legal developments, including recent decisions of various courts and administrative bodies. This should not be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this email without seeking the advice of legal counsel.