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Cal. No. 286

I N S E N A T E

February 22, 2016

Introduced by Sens. HANNON, LARKIN, MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public health law and the education law, in relation to electronic prescriptions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 3, 4 and 5 of section 281 of the public health
2 law, subdivision 3 as amended by chapter 13 of the laws of 2015, subdi-
3 visions 4 and 5 as added by section 2 of part B of chapter 447 of the
4 laws of 2012, are amended and a new subdivision 7 is added to read as
5 follows:
6 3. On or before December thirty-first, two thousand twelve, the
7 commissioner shall promulgate regulations, in consultation with the
8 commissioner of education, establishing standards for electronic
9 prescriptions. Notwithstanding any other provision of this section or
10 any other law to the contrary, effective three years subsequent to the
11 date on which such regulations are promulgated, no person shall issue
12 any prescription in this state unless such prescription is made by elec-
13 tronic prescription from the person issuing the prescription to a phar-
14 macy in accordance with such regulatory standards, except for
15 prescriptions: (a) issued by veterinarians; (b) issued in circumstances
16 where electronic prescribing is not available due to temporary techno-
17 logical or electrical failure, as set forth in regulation; (c) issued by
18 practitioners who have received a waiver or a renewal thereof for a
19 specified period determined by the commissioner, not to exceed one year,
20 from the requirement to use electronic prescribing, pursuant to a proc-
21 ess established in regulation by the commissioner, in consultation with
22 the commissioner of education, due to economic hardship, technological
23 limitations that are not reasonably within the control of the practi-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 tioner, or other exceptional circumstance demonstrated by the practi-
2 tioner; (d) issued by a practitioner under circumstances where, notwith-
3 standing the practitioner's present ability to make an electronic
4 prescription as required by this subdivision, such practitioner reason-
5 ably determines that it would be impractical for the patient to obtain
6 substances prescribed by electronic prescription in a timely manner, and
7 such delay would adversely impact the patient's medical condition,
8 provided that if such prescription is for a controlled substance, the
9 quantity of controlled substances does not exceed a five day supply if
10 the controlled substance were used in accordance with the directions for
11 use; [or] (e) issued by a practitioner to be dispensed by a pharmacy
12 located outside the state, as set forth in regulation; OR (F) ISSUED BY
13 A PRACTITIONER WHO HAS MADE A CERTIFICATION TO THE DEPARTMENT UNDER
14 SUBDIVISION SEVEN OF THIS SECTION.

15 4. In the case of a prescription for a controlled substance issued by
16 a practitioner under paragraph (b) of subdivision three of this section,
17 the practitioner shall [file information about the issuance of such
18 prescription with the department as soon as practicable, as set forth in
19 regulation] MAINTAIN INFORMATION IN THE PRACTITIONER'S RECORDS REGARDING
20 THE ISSUANCE OF SUCH PRESCRIPTION.

21 5. In the case of a prescription for a controlled substance issued by
22 a practitioner under paragraph (d) [or], (e) OR (F) of subdivision three
23 of this section, the practitioner shall, upon issuing such prescription,
24 [file information about the issuance of such prescription with the
25 department by electronic means, as set forth in regulation] MAINTAIN
26 INFORMATION IN THE PRACTITIONER'S RECORDS REGARDING THE ISSUANCE OF SUCH
27 PRESCRIPTION.

28 7. A PRACTITIONER SHALL NOT BE REQUIRED TO ISSUE PRESCRIPTIONS ELEC-
29 TRONICALLY AS OTHERWISE REQUIRED BY THIS SECTION IF HE OR SHE CERTIFIES
30 TO THE DEPARTMENT THAT HE OR SHE WILL NOT ISSUE MORE THAN TWENTY-FIVE
31 PRESCRIPTIONS OVER EACH SUCCESSIVE TWELVE MONTH PERIOD FOLLOWING THE
32 DATE OF THE CERTIFICATION. A PRACTITIONER MAY TERMINATE SUCH CERTIF-
33 ICATION AT ANY TIME IF THE PRACTITIONER INTENDS TO ISSUE MORE THAN TWEN-
34 TY-FIVE PRESCRIPTIONS OVER A TWELVE MONTH PERIOD FOLLOWING THE DATE OF
35 CERTIFICATION. IF THE CERTIFICATION IS TERMINATED, SUCH TERMINATION
36 SHALL NOT AFFECT THE VALIDITY OF THE PRESCRIPTIONS THAT LAWFULLY
37 PRECEDED THE TERMINATION, AND THE PRACTITIONER SHALL MAINTAIN FOR SUCH
38 PRESCRIPTIONS THAT PRECEDED THE TERMINATION THE INFORMATION REQUIRED BY
39 SUBDIVISION FIVE OF THIS SECTION. A PRACTITIONER MAY MAKE A CERTIF-
40 ICATION UNDER THIS SUBDIVISION REGARDLESS OF WHETHER HE OR SHE HAS
41 PREVIOUSLY RECEIVED A WAIVER UNDER PARAGRAPH (C) OF SUBDIVISION THREE OF
42 THIS SECTION.

43 S 2. Subdivisions 10, 11, 12 and 13 of section 6810 of the education
44 law, subdivision 10 as amended by chapter 13 of the laws of 2015, subdi-
45 visions 11, 12 and 13 as added by section 3 of part B of chapter 447 of
46 the laws of 2012, are amended and a new subdivision 15 is added to read
47 as follows:

48 10. Notwithstanding any other provision of this section or any other
49 law to the contrary, effective three years subsequent to the date on
50 which regulations establishing standards for electronic prescriptions
51 are promulgated by the commissioner of health, in consultation with the
52 commissioner pursuant to subdivision three of section two hundred eight-
53 y-one of the public health law, no practitioner shall issue any
54 prescription in this state, unless such prescription is made by elec-
55 tronic prescription from the practitioner to a pharmacy, except for
56 prescriptions: (a) issued by veterinarians; (b) issued or dispensed in

1 circumstances where electronic prescribing is not available due to
2 temporary technological or electrical failure, as set forth in regu-
3 lation; (c) issued by practitioners who have received a waiver or a
4 renewal thereof for a specified period determined by the commissioner of
5 health, not to exceed one year, from the requirement to use electronic
6 prescribing, pursuant to a process established in regulation by the
7 commissioner of health, in consultation with the commissioner due to
8 economic hardship, technological limitations that are not reasonably
9 within the control of the practitioner, or other exceptional circum-
10 stance demonstrated by the practitioner; (d) issued by a practitioner
11 under circumstances where, notwithstanding the practitioner's present
12 ability to make an electronic prescription as required by this subdivi-
13 sion, such practitioner reasonably determines that it would be impracti-
14 cal for the patient to obtain substances prescribed by electronic
15 prescription in a timely manner, and such delay would adversely impact
16 the patient's medical condition, provided that if such prescription is
17 for a controlled substance, the quantity that does not exceed a five day
18 supply if the controlled substance was used in accordance with the
19 directions for use; [or] (e) issued by a practitioner to be dispensed by
20 a pharmacy located outside the state, as set forth in regulation; OR (F)
21 ISSUED BY A PRACTITIONER WHO HAS MADE A CERTIFICATION TO THE DEPARTMENT
22 OF HEALTH UNDER SUBDIVISION FIFTEEN OF THIS SECTION.

23 11. In the case of a prescription issued by a practitioner under para-
24 graph (b) of subdivision ten of this section, the practitioner shall be
25 required to [file information about the issuance of such prescription
26 with the department of health as soon as practicable, as set forth in
27 regulation] MAINTAIN INFORMATION IN THE PRACTITIONER'S RECORDS REGARDING
28 THE ISSUANCE OF SUCH PRESCRIPTION.

29 12. In the case of a prescription issued by a practitioner under para-
30 graph (d) [or], (e) OR (F) of subdivision ten of this section, the prac-
31 titioner shall, upon issuing such prescription, [file information about
32 the issuance of such prescription with the department of health by elec-
33 tronic means, as set forth in regulation] MAINTAIN INFORMATION IN THE
34 PRACTITIONER'S RECORDS REGARDING THE ISSUANCE OF SUCH PRESCRIPTION.

35 13. The waiver process established in regulation pursuant to paragraph
36 (c) of subdivision ten of this section shall provide that a practitioner
37 prescribing under a waiver must notify the department OF HEALTH in writ-
38 ing promptly upon gaining the capability to use electronic prescribing,
39 and that a waiver shall terminate within a specified period of time
40 after the practitioner gains such capability.

41 15. A PRACTITIONER SHALL NOT BE REQUIRED TO ISSUE PRESCRIPTIONS ELEC-
42 TRONICALLY AS OTHERWISE REQUIRED BY THIS SECTION IF HE OR SHE CERTIFIES
43 TO THE DEPARTMENT OF HEALTH THAT HE OR SHE WILL NOT ISSUE MORE THAN
44 TWENTY-FIVE PRESCRIPTIONS OVER EACH SUCCESSIVE TWELVE MONTH PERIOD
45 FOLLOWING THE DATE OF THE CERTIFICATION. A PRACTITIONER MAY TERMINATE
46 SUCH CERTIFICATION AT ANY TIME IF THE PRACTITIONER INTENDS TO ISSUE MORE
47 THAN TWENTY-FIVE PRESCRIPTIONS OVER A TWELVE MONTH PERIOD FOLLOWING THE
48 DATE OF CERTIFICATION. IF THE CERTIFICATION IS TERMINATED, SUCH TERMI-
49 NATION SHALL NOT AFFECT THE VALIDITY OF THE PRESCRIPTIONS THAT LAWFULLY
50 PRECEDED THE TERMINATION, AND THE PRACTITIONER SHALL MAINTAIN FOR SUCH
51 PRESCRIPTIONS THAT PRECEDED THE TERMINATION THE INFORMATION REQUIRED BY
52 SUBDIVISION TWELVE OF THIS SECTION. A PRACTITIONER MAY MAKE A CERTIF-
53 ICATION UNDER THIS SUBDIVISION REGARDLESS OF WHETHER HE OR SHE HAS
54 PREVIOUSLY RECEIVED A WAIVER UNDER PARAGRAPH (C) OF SUBDIVISION TEN OF
55 THIS SECTION.

56 S 3. This act shall take effect immediately.