

# Advisory Notices

**NYSED.gov**

**Office of the Professions**

## **Mandatory Electronic Prescribing**

Governor Andrew Cuomo has signed legislation into law extending the deadline for required e-prescribing of medications for one year, to March 27, 2016. All prescribers should continue to diligently establish their e-prescribing capability as required by the law so that they will be in compliance by the new effective date. (March 18, 2015)

Effective March 27, 2015, a new law will require nurse practitioners, midwives, dentists, podiatrists, physicians, physician assistants and optometrists in New York State ("prescribers") to issue prescriptions electronically directly to a pharmacy, with limited exceptions. The law will not require a prescriber to issue a prescription electronically when:

- Electronic prescribing is not available due to temporary technological or electronic failure;
- The prescriber has a waiver granted by the New York State Commissioner of Health;
- The prescriber reasonably determines that it would be impractical for the patient to obtain substances prescribed by electronic prescription in a timely manner; or,
- The prescription will be dispensed at a pharmacy located outside New York State.

The new law requires electronic prescribing for all types of medications (controlled substances and non-controlled substances) and for syringes and other medical devices dispensed at a pharmacy in New York.

Information about this law (Public Health Law §281) is available on the New York State Department of Health website.

## **Electronic Prescriptions**

An electronic prescription is a prescription that is:

- Created, recorded, transmitted or stored by electronic means;
- Issued and validated with the prescriber's electronic signature;
- Electronically encrypted to prevent unauthorized access, alteration or use of the prescription; and,
- Transmitted electronically directly from the prescriber to a pharmacy or pharmacist.

Electronic prescription computer technology must comply with federal and New York regulations. These regulations require prescribers and pharmacists to have a secure (encrypted and encoded) system for electronic transmission of the prescription from computer to computer in order to protect the confidentiality and security of patient information. Electronic prescribing computer applications must also be "certified" (i.e. audited by an organization or certified by the federal Drug Enforcement Agency to ensure it meets technical standards acceptable to federal government).

EMAILED prescriptions are **NOT** considered electronic prescriptions since **EMAIL** is not considered a secure method of electronically transmitting a prescription. A faxed prescription is **NOT** considered an electronic prescription.

Prescribers must personally generate and transmit electronic prescriptions to pharmacies or pharmacists and are **not** legally allowed to delegate this responsibility to other individuals. Electronic prescriptions must include the same information that written prescriptions do except that:

- All electronic prescriptions must include an NPI number;
- Electronic prescriptions must be electronically signed; and,
- The prescriber must specify whether a prescription must be dispensed as written, if a brand-name product is therapeutically required.

For more information, visit: [www.health.ny.gov/professionals/narcotic/](http://www.health.ny.gov/professionals/narcotic/).

### **Government Requirements for Electronic Prescribing**

Prescribers must obtain a number of government approvals and identification numbers and register their "certified electronic prescribing computer application" in order to issue electronic prescriptions to pharmacies. Here's a brief summary of these requirements.

- **A National Provider Identifier (NPI) issued by the US Center for Medicaid and Medicare Services (CMS).** All electronic prescriptions issued in New York State must include a NPI. Federal law requires health care providers (including hospitals and prescribers) to use NPIs on electronic health care transactions (i.e., processing claims, status inquiries, eligibility inquiries). CMS issues NPIs to institutional health care providers (i.e., hospitals) and to licensed prescribers. If a prescriber works in a hospital, the prescriber may use the hospital's NPI when issuing prescriptions. In most other cases, the prescriber must include his or her personal NPI on the prescription. For more information about applying for a NPI, visit: [www.cms.hhs.gov/nationalProvIdentstand](http://www.cms.hhs.gov/nationalProvIdentstand). Applications can be submitted online or by regular mail.
- **A Federal Drug Enforcement Administration Registration (DEA) Number issued by the US Department of Justice- Drug Enforcement Administration.** In New York, a DEA number must be on every prescription for a controlled substance issued by a prescriber. The DEA issues DEA numbers to institutional health care providers (i.e., hospitals) and to licensed prescribers. In most cases, a prescriber must obtain a DEA number in order to prescribe or dispense controlled substances. In some cases, prescribers who are employed at a hospital may, when acting in the usual course of employment, may dispense or prescribe controlled substances under the DEA number of the hospital. For more information about applying for a DEA number visit, [www.DEAdiversion.USDOJ.gov](http://www.DEAdiversion.USDOJ.gov) or call 1-877-883-5789, 1-800-882-9539 or 212-337-1593. Prescribers who do not prescribe controlled substances do not need a DEA number.
- **A Health Commerce System Account (HCSA) from the New York State Department of Health.** All prescribers must have a HCSA in order access an online Prescription Monitoring Registry when prescribing controlled substances. New York Law requires prescribers, when prescribing controlled substances, to consult the registry, which contains information about prescriptions for controlled substances obtained their patients. Instructions for establishing a Health Commerce System Account are available at the New

York State Department of Health's web site: [www.health.ny.gov/professionals/narcotic/](http://www.health.ny.gov/professionals/narcotic/) Prescribers who do not prescribe controlled substances do need an HCSA account.

- **Registration with the New York State Department of Health's Bureau of Narcotic Enforcement.** Each prescriber must register with the New York State Health Department's Bureau of Narcotic Enforcement in order to prescribe controlled substances. The registration must be renewed every 2 years. Instructions on registering are available at the New York State Department of Health's Bureau of Narcotic Enforcement web site: [www.health.ny.gov/professionals/narcotic/](http://www.health.ny.gov/professionals/narcotic/) Prescribers who do not prescribe controlled substances do not need to register as a prescriber of controlled substances with the New York State Department of Health's Bureau of Narcotic Enforcement.
- **Registration of "Certified" Electronic Prescribing Computer Applications** Prescribers must ensure that they issue electronic prescriptions using electronic prescribing computer applications that meet federal regulatory criteria for protecting the confidentiality and security of patient information. Information relating to federal criteria for electronic prescribing computer applications is available at: [www.deadiversion.usdoj.gov/ecommm/e\\_rx/thirdparty.htm](http://www.deadiversion.usdoj.gov/ecommm/e_rx/thirdparty.htm) Prescribers should verify with the computer company that licenses that their electronic prescribing computer application that the application is "certified" (i.e. audited by an organization or certified by the federal Drug Enforcement Agency to ensure that the application meets technical standards acceptable to federal government). Prescribers must then complete a "Practitioner EPCS Registration Form" and file it with the New York State Department of Health's Bureau of Narcotics Enforcement. On the form, the prescriber must identify the "certified" electronic prescribing computer application that he or she uses. For information about registration send an email to [narcotic@health.state.ny.us](mailto:narcotic@health.state.ny.us) Include "Electronic Prescribing" in the subject. Addition information about electronic prescribing is at: [www.health.ny.gov/professionals/narcotic/electronic\\_prescribing/](http://www.health.ny.gov/professionals/narcotic/electronic_prescribing/)
- **A Medicaid Provider Number.** Prescribers must obtain a Medicaid Provider Number in order to prescribe for Medicaid beneficiaries. To access application forms for Medicaid reimbursement, go to [www.emedny.org](http://www.emedny.org) and click on the provider enrollment tab at the top of the page. If a prescriber will not be participating as a provider in New York's Medicaid Program, the prescriber does not need to obtain a Medicaid Provider Number.

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### **Changes to the Controlled Substance Schedules in Section 3306 of the New York State Public Health Law**

Per the Bureau of Narcotic Enforcement ([www.health.ny.gov/professionals/narcotic/](http://www.health.ny.gov/professionals/narcotic/)), effective February 23, 2013, the following changes will be made to the controlled substance schedules in Section 3306 of the New York State Public Health Law. Where applicable, some common brand name pharmaceutical preparations containing the controlled substances are listed in bold:

#### **Schedule II Additions:**

Hydrocodone (dihydrocodeinone) (**Vicodin® , Lortab® , Tussionex®**) **This action renders all products containing hydrocodone, including but not limited to hydrocodone in combination with acetaminophen or ibuprofen, Schedule II.**

#### **Schedule III Deletions:**

Hydrocodone (dihydrocodeinone)(**Vicodin® , Lortab® , Tussionex®** ) **This action renders all**

**products containing hydrocodone, including but not limited to hydrocodone in combination with acetaminophen or ibuprofen, Schedule II.**

**Schedule IV Additions:**

Tramadol(**Ultram® , Ultacet® , Ryzolt™**)

Practitioners and pharmacists are responsible for ensuring prescriptions for all controlled substances including the medications listed above conform to all requirements of the law and regulations, both federal and state. Article 33 of the Public Health Law and Title 10 Part 80 Rules and Regulations on Controlled Substances in New York State may be accessed via the following website:

[www.health.ny.gov/professionals/narcotic/laws\\_and\\_regulations.htm](http://www.health.ny.gov/professionals/narcotic/laws_and_regulations.htm)

Frequently Asked Questions (FAQs) regarding these changes to the controlled substance schedule can be found at the following website:

[www.health.ny.gov/professionals/narcotic/laws\\_and\\_regulations/part\\_c-chapter\\_447-laws\\_of\\_2012-faq.htm](http://www.health.ny.gov/professionals/narcotic/laws_and_regulations/part_c-chapter_447-laws_of_2012-faq.htm)

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**Limited Licenses in Clinical Laboratory Technology and Certified Histological Technician**

Chapter 336 of the Laws of 2013 has been enacted to authorize the limited license for clinical laboratory technology and for certified histological technician to be valid until September 1, 2016, and to establish that the registration issued with the limited license shall be effective until September 1, 2016. Persons holding a limited license in these two professions, which currently have an expiration date of August 31, 2013, will receive information within the next two weeks on the process to obtain licensure and registration documents that meet the new expiration dates established in this law. **At this time, persons holding a limited license as a clinical laboratory technologist or a certified histological technician continue to be legally authorized to practice while in the process of obtaining documents that reflect the new expiration dates of September 1, 2016.**

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**U.S. Court of Appeals Decision on Litigation Involving 13 Professions that Require U.S. Citizenship or Permanent Lawful Residence for Licensure**

Please be advised that in accordance with the decision of the United States Court of Appeals, Second Circuit, in *Dandamudi v Tisch*, No. 10-4397- CV, 2012 WL 2763281 (July 10, 2012), we will consider applications for licenses from individuals who would otherwise be barred from licensure by statutory requirements of citizenship or permanent residency, in one the following professions:

- Certified Shorthand Reporting
- Chiropractic
- Dentistry
- Dental Hygiene
- Landscape Architecture
- Land Surveying
- Massage Therapy
- Medicine
- Midwifery

- Pharmacy
- Professional Engineering
- Veterinary Medicine
- Veterinary Technology

If you believe you meet these requirements, please submit an application for licensure to the Department and we will process your application accordingly.

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### **Internet Coupons/Vouchers**

Generally speaking, the offering of internet coupons/vouchers, in situations in which the recipient of the coupon/voucher has initiated contact with the marketing organization and requested notification of deals, may be structured in a manner that does not constitute a prohibited fee-splitting or referral fee arrangement, as long as the negotiated fee between the internet coupon/voucher advertiser and licensee represents reasonable compensation for the cost of advertising, including a reasonable profit. However, because there are numerous possible variations in the types of advertising arrangements, each arrangement must be analyzed on its own facts in accordance with applicable statutory and regulatory provisions, including provisions relating to the exercise of undue influence on a patient or client, fee splitting, referral fees, and prohibitions against false and misleading advertising (Education Law section 6509-a and section 29.1[b][2], [3], [4], and [12] of the Rules of the Board of Regents).

The actual language of section 6509-a is available at: [www.op.nysed.gov/title8/subart3.htm#dla](http://www.op.nysed.gov/title8/subart3.htm#dla)  
The actual language of the Regents Rules is available at: [www.op.nysed.gov/title8/part29.htm](http://www.op.nysed.gov/title8/part29.htm).