COMMONWEALTH of VIRGINIA

Office of the Governor

Daniel Carey, MD
Secretary of Health and Human Resources

October 26, 2018

The Honorable Robert D. Orrock, Sr.
Chairman
House Committee on Health, Welfare, and Institutions

The Honorable Stephen D. Newman
Chairman
Senate Committee on Education and Health

Re: Final Report, E-Prescribing Workgroup, Chapter 429 Enactment Clause 3 (Regular Session, 2017)

Dear Chairmen:

Pursuant to Chapter 429 of the 2017 General Assembly Session, an interim report was published in 2017 (RD431) on e-prescribing. Subsequently, a workgroup was convened on August 29, 2018, to finalize its review of actions necessary for implementation, by July 1, 2020, of the mandatory issuance of electronic prescriptions for controlled substances containing an opiate. The workgroup previously met on August 2, 2017 and August 29, 2017, and its actions were summarized in an interim report submitted to you by Secretary Hazel on October 12, 2017. The workgroup was comprised of representatives from the Board of Pharmacy, Virginia Pharmacists Association, Virginia Council of Nurse Practitioners, National Association of Chain Drug Stores, Medical Society of Virginia, Virginia Hospital and Health Care Association, Surescripts, Virginia Dental Association, Virginia Veterinary Medical Association, Drug Enforcement Administration, and the Virginia Association of Health Plans. A complete listing of the workgroup members is enclosed. After opening remarks, David Brown, DC, Director of the Department of Health Professions (DHP), chaired the workgroup meeting.

Current data was provided by Surescripts to the members. Surescripts self-reports that it operates the nation's largest clinical health information network, serving providers in all 50 states and D.C. The company's network connects to over 98 percent of all retail pharmacies, most mail order pharmacies, and over one million U.S. providers. The Surescripts data represented two types of prescribers: Active E-prescribers (prescribers who have sent e-prescriptions to pharmacies using Surescripts network in the last 30 days using the electronic health records (EHR) software applications) and Active E-Prescribers Electronic Prescriptions for Controlled Substances (EPCS) enabled (prescribers who use an EHR software that is EPCS certified and audit approved).

During the last year, the percentage of Virginia prescribers who are active E-prescribers increased from 56.8% to 60.8%, and the percentage of prescribers who are EPCS enabled

doubled from 6.3% to 12.8%. Nationally, the percentage of prescribers who are EPCS enabled increased from 17.1% to 27.6%. Additionally, the percentage of Virginia pharmacies that are active eRx pharmacies (pharmacies that are ready and processing e-prescriptions from prescribers' applications) increased slightly from 97.5% to 98.5%, and the percentage of EPCS enabled pharmacies (pharmacies with certified and audit approved software ready to receive EPCS transactions from prescribers) increased from 90.3% to 95.9%. Nationally, the percentage of EPCS enabled pharmacies increased from 90.5% to 94.5%. During previous discussions, it was noted that there are hundreds of EPCS enabled physicians practicing within healthcare systems who do not utilize Surescripts (e.g. Kaiser Permanente) and are not included in the Surescripts data. Additionally, the Surescripts data regarding EPCS enabled prescribers does not include most dentists.

It was acknowledged that similar federal legislation is currently being considered by the United States Congress. HR 6 requires the e-prescribing of a prescription for a covered part D drug under a prescription drug plan (or under a Medicare Advantage Prescription Drug plan) for a schedule II, III, IV, or V controlled substance for drugs prescribed on or after January 1, 2021. In contrast, Virginia Code Section §54.1-3408.02 requires any prescription for a controlled substance that contains an opiate to be issued as an electronic prescription as of July 1, 2020. HR 6 was passed by the House of Representatives in June 2018 and later by the Senate in October 2018. HR 6 contains exemptions similar to the workgroup's recommendations.

The workgroup considered whether to monitor the progression of the federal legislation prior to recommending a legislative proposal to authorize the exemptions that were recommended in the 2017 Interim Report and then further clarified at the August 29, 2018, meeting. There was consensus that legislation should be introduced during the 2019 General Assembly Session (enclosed) and that any necessary amendments in response to federal legislation could be addressed during the 2020 General Assembly Session. There was further consensus that the Secretary of Health and Human Resources should convene a workgroup within two years of the effective date of the 2019 legislation of interested stakeholders to evaluate the implementation and report to the Chairmen of the House Committee on Health, Welfare, and Institutions and the Senate Committee on Education and Health by November 1, 2022. The workgroup's evaluation should identify successes and challenges with the mandate, and offer possible recommendations for increasing the electronic prescribing of controlled substances.

Please feel free to contact Caroline Juran, Executive Director of the Virginia Board of Pharmacy, at (804) 367-4456, should you have any questions.

Respectfully,

Daniel Carey, MD

Enclosures

HHR/DHP E-Prescribing Workgroup
Member List – August 29, 2018

In Attendance:

Workgroup Conveners

Daniel Carey, MD
Secretary of Health and Human Resources

David Brown, DC
Department of Health Professions, Director

Caroline Juran
Board of Pharmacy, Executive Director

Workgroup Members

Omar Abubaker, DMD, Ph.D.
Virginia Dental Association

Christina Barrille
Virginia Pharmacists Association

Ellen Byrne, DDS, PhD
Virginia Dental Association, Alternate Member

Lannie W. Cropper
Virginia Association of Chain Drug Stores

Carol Forster, MD
Kaiser Permanente

Kelly Gottschalk, DVM
Virginia Veterinary Medical Association

Doug Gray
Virginia Association of Health Plans

Richard Grossman
Virginia Council of Nurse Practitioners

Scott Johnson
HCA Hospitals

Ralston King
Medical Society of Virginia

Jodi Manz, MSW
Assistant Secretary of Health and Human Resources

R. Brent Rawlings
Virginia Hospital & Healthcare Association

Ken Whittemore, Jr., R.Ph., MBA
Surescripts, LLC

Staff

Laura Z. Rothrock
Virginia Department of Health Professions, Executive Assistant to Director David E. Brown, DC

Sheralee Copeland
Board of Pharmacy, Executive Assistant

Absent:

Ruth A. Carter
Drug Enforcement Administration

DRAFT Legislation

2019 Session of the General Assembly

A BILL to amend the *Code of Virginia* by amending §§ 54.1-3408.02 and 54.1-3410 of the Code of Virginia relating to electronic prescribing of a controlled substance containing an opiate.

Be it enacted by the General Assembly of Virginia:

1. **That § 54.1-3408.02 and 54.1-3410 of the *Code of Virginia* are amended and reenacted as follows:**

§ 54.1-3408.02. (Effective July 1, 2020) Transmission of prescriptions.

A. Consistent with federal law and in accordance with regulations promulgated by the Board, prescriptions may be transmitted to a pharmacy as an electronic prescription or by facsimile machine and shall be treated as valid original prescriptions.

B. Any prescription for a controlled substance that contains an opiate shall be issued as an electronic prescription with the following exceptions:

1. A prescriber who dispenses the opiate directly to the patient or patient's agent;

2. A prescription for a controlled substance containing an opiate for a person residing in a hospital, assisted living facility, nursing home, or residential healthcare facility or receiving services from a hospice provider or outpatient dialysis facility, or;

3. A prescriber who experiences temporary technological or electrical failure or other temporary extenuating circumstance that prevents the prescription from being transmitted electronically, provided the prescriber documents the reason for this exception in the patient's medical record;

4. A prescriber who writes a prescription to be dispensed by a pharmacy located on federal property, provided the prescriber documents the reason for this exception in the patient's medical record;

5. A prescriber who writes a low volume of prescriptions, defined as less than 25 prescriptions during the most recent twelve-month period with a maximum of a seven-day supply for each prescription;

6. A prescription issued by a veterinarian;

7. A prescription for a drug for which the Food and Drug Administration requires a prescription to contain elements that are not able to be included in electronic prescribing,

such as a drug with risk evaluation and mitigation strategies that include elements to assure safe use;

8. A prescription issued for an opiate under a research protocol;

9. A prescription issued in accordance with an Executive Order of the Governor for a declared emergency; and

10. A prescription that cannot be issued electronically in a timely manner and the patient's condition is at risk, provided the prescriber documents the reason for this exception in the patient's medical record.

C. In accordance with regulations adopted by the licensing board for a prescriber, a waiver may be granted for a period not to exceed one year of the requirement that any prescription for a controlled substance that contains an opiate be issued as an electronic prescription due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstance demonstrated by the prescriber.

§ 54.1-3410. When pharmacist may sell and dispense drugs.

A. A pharmacist, acting in good faith, may sell and dispense drugs and devices to any person pursuant to a prescription of a prescriber as follows:

1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed;

2. In emergency situations, Schedule II drugs may be dispensed pursuant to an oral prescription in accordance with the Board's regulations;

3. Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a prescriber, he shall affix to the container in which such drug is dispensed, a label showing the prescription serial number or name of the drug; the date of initial filling; his name and address, or the name and address of the pharmacy; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the prescriber by whom the prescription was written, except for those drugs dispensed to a patient in a hospital pursuant to a chart order; and such directions as may be stated on the prescription.

B. A drug controlled by Schedules III through VI or a device controlled by Schedule VI shall be dispensed upon receipt of a written or oral prescription as follows:

1. If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom,

or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed.

2. If the prescription is oral, the prescriber shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and devices, except for the signature of the prescriber.

A pharmacist who dispenses a Schedule III through VI drug or device shall label the drug or device as required in subdivision A 3 of this section.

C. A drug controlled by Schedule VI may be refilled without authorization from the prescriber if, after reasonable effort has been made to contact him, the pharmacist ascertains that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The refill shall be made in compliance with the provisions of § 54.1-3411.
If the written or oral prescription is for a Schedule VI drug or device and does not contain the address or registry number of the prescriber, or the address of the patient, the pharmacist need not reduce such information to writing if such information is readily retrievable within the pharmacy.

D. Pursuant to authorization of the prescriber, an agent of the prescriber on his behalf may orally transmit a prescription for a drug classified in Schedules III through VI if, in such cases, the written record of the prescription required by this subsection specifies the full name of the agent of the prescriber transmitting the prescription.

E. (Effective July 1, 2020) ~~No pharmacist shall dispense a controlled substance that contains an opiate unless the prescription for such controlled substance is issued as an electronic prescription~~. A dispenser is not required to verify that a prescriber properly falls under one of the exceptions specified in § 54.1-3408.02 for electronic prescribing prior to dispensing a controlled substance containing an opiate. A dispenser may continue to dispense a controlled substance containing an opiate from valid written, oral, or facsimile prescriptions that are otherwise consistent with applicable laws.

2. That the Boards of Medicine, Nursing, Dentistry, and Optometry shall promulgate regulations for issuing or renewing a temporary waiver for a prescriber within 280 days of enactment of this Act.

3. That the Secretary of Health and Human Resources shall convene a work group within two years of the effective date of this Act of interested stakeholders, including the Medical Society of Virginia, the Virginia Hospital and Healthcare Association, the Virginia Dental Association, the Virginia Association of Health Plans, and the Virginia Pharmacists Association to evaluate the implementation of this Act and shall make a report to the Chairmen of the House Committee on Health, Welfare, and Institutions and the Senate Committee on Education and Health by November 1, 2022. The workgroup's evaluation shall identify successes and challenges with the mandate, and offer possible recommendations for increasing the electronic prescribing of controlled substances.