KBN NOTIFICATION OF CHANGE IN THE LAW REGARDING ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

On March 26, 2019, Governor Matt Bevin signed HB 342 into law. *See*, KRS 218A.182. Effective January 1, 2021, a prescription for a controlled substance must be submitted to a Kentucky pharmacy electronically, unless a statutory exception applies. The only exceptions that apply to ARPNs are:

1) temporary electrical or technological failure;
2) hospice patients;
3) nursing facility residents;
4) out-of-state pharmacies;
5) military/federal pharmacies;
6) under a research protocol;
7) per a written CHFS waiver;
8) where the prescriber and dispenser are part of the same entity;
9) where the most recently implemented version of the National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard cannot accommodate elements of the prescription;
10) for drugs that cannot be authorized though electronic prescribing pursuant to DEA requirements, including extemporaneous compounding; or
11) pursuant to a determination by the prescriber that, in spite of the prescriber's ability to issue an electronic prescription, it would be impractical for the patient to obtain the prescribed controlled substance through the issuance of an electronic prescription, and that delay would adversely impact the patient's medical condition.

Pharmacists who receive non-electronic prescriptions after January 1, 2021, do not have to verify the applicability of one of the exceptions. A pharmacist may continue to fill non-electronic prescriptions on an assumption that one of the exceptions applies, provided the prescription is otherwise lawful.

The Kentucky Cabinet for Health and Family Services (CHFS) has promulgated a regulation, 902 KAR 55:130, which includes a Temporary Exemption Form (https://chfs.ky.gov/agencies/os/oig/dai/deppb/Documents/EPCSTemporaryExemptionFormEditable.pdf). Through the use of this form, a prescriber may apply for a written waiver from the electronic prescribing requirement based on economic hardship, technological limitations that are outside of the prescriber's control, or other exceptional circumstances. An example of economic hardship is where the cost of implementation of electronic prescribing is greater than 5% of the prescriber's gross annual income. Where it is discovered that an APRN has issued a controlled substance prescription through non-electronic means, and where no exception applies, CHFS shall impose a fine of $1,000 for each violation, not to exceed $2,000 in a twelve month period, and shall report the prescriber to KBN. The prescriber may appeal the imposition of a fine by filing a written request for hearing with CHFS within 20 days of the issuance of the notification of the imposition of the fine. It is inconsistent with the practice of nursing for an APRN to violate KRS 218A.182 or 902 KAR 55:130. See, KRS 314.090(1)(d) (nurses may be disciplined by the KBN for actions or omissions that are inconsistent with the practice of nursing, even where such actions or omissions are non-willful); therefore, a violation of KRS 218A.182 or 902 KAR 55:130 will likely result in dual penalties, a fine imposed by CHFS pursuant to 902 KAR 55:130, and disciplinary sanctions imposed by KBN pursuant to KRS 314.091, 314.991, and 201 KAR 20:162. To avoid these sanctions, all Kentucky APRNs who prescribe controlled substances should do so electronically, unless one of the above-mentioned exceptions applies. The January 1, 2021, deadline related to the new electronic prescribing requirement was addressed in the Summer and Fall editions of The KBN Connection: The KBN Connection, Ed. 65, p. 10 (Fall 2020); The KBN Connection, ed. 65, p. 25 (Summer 2020). Additional information regarding KRS 218A.182 and 902 KAR 55:130 is available on the CHFS-OIG website: https://chfs.ky.gov/agencies/os/oig/dai/deppb/Documents/MandatoryEPCSInformation.pdf.

Questions for KBN staff regarding this matter should be directed to Myra Goldman, APRN Practice Consultant, at myrak.goldman@ky.gov.

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