

**ADOPTED REGULATION OF
THE STATE BOARD OF PHARMACY**

LCB File No. R154-16

Effective _____, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~is material to be omitted~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 639.070 and 639.0745.

A REGULATION relating to prescriptions; revising provisions relating to the electronic transmission of a prescription to a pharmacy; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the State Board of Pharmacy to adopt regulations governing the dispensing of poisons, drugs, chemicals and medicines. (NRS 639.070) Existing law also requires the Board to adopt regulations concerning the electronic transmission of a prescription from a practitioner to a pharmacist for the dispensing of a drug. (NRS 639.0745)

Existing regulations: (1) authorize a practitioner to transmit a prescription to a pharmacy using a computer system approved by the Board; and (2) provide that the Board will approve the computer system of a practitioner if the computer system meets certain requirements. (NAC 639.7102) **Section 1** of this regulation authorizes a practitioner to delegate the task of transmitting a prescription to a pharmacy using an approved computer system to the designated agent of the practitioner. **Section 1** also requires the computer system of a practitioner to include on any prescription that is transmitted to a pharmacy a field containing information that uniquely identifies the practitioner.

Existing regulations establish the circumstances in which a practitioner is authorized to transmit a prescription for a dangerous drug or a controlled substance listed in schedule II, III, IV or V to a pharmacy electronically and require the practitioner to be the only person who will have access to the prescription until it is received by the pharmacy. (NAC 639.7105) **Section 2** of this regulation: (1) specifies that such a requirement applies only if the prescription is for a controlled substance; (2) authorizes the designated agent of a practitioner to transmit a prescription for a dangerous drug to a pharmacy electronically; and (3) establishes additional requirements relating to the electronic transmission of a prescription to a pharmacy by a practitioner or the designated agent of the practitioner.

Existing regulations authorize the Board to suspend the privilege of a practitioner to transmit prescriptions electronically if the Board reasonably suspects that the practitioner has transmitted a prescription electronically that is unlawful, fraudulent or not for a legitimate

purpose. (NAC 639.7105) **Section 2** also authorizes the Board to: (1) suspend the privilege of a practitioner to transmit prescriptions electronically if the Board reasonably suspects that the designated agent of the practitioner has transmitted a prescription electronically that is unlawful, fraudulent or not for a legitimate purpose; and (2) take any other appropriate action.

Section 1. NAC 639.7102 is hereby amended to read as follows:

639.7102 1. A practitioner may:

(a) Issue a prescription using a computer system approved by the Board; and

(b) Transmit the prescription using that computer system to a pharmacy specified by the patient for whom the practitioner issues the prescription ~~or~~ *or, except as otherwise provided by law or regulation, delegate such a task to the designated agent of the practitioner.*

2. The Board will approve the computer system of a practitioner if the computer system:

(a) Requires a fingerprint scan, retinal scan, personal identification number or other unique identification of the practitioner *or the designated agent of the practitioner* to activate the computer system by which a prescription will be entered and to reactivate the computer system if the computer system has not been in use for 15 minutes or longer;

(b) Maintains a record of:

(1) Each prescription that the practitioner issues using the computer system; and

(2) Each pharmacy to which the practitioner ~~submits~~ *or the designated agent of the practitioner transmits* the prescription;

(c) Is able to print a written prescription that complies with NRS 639.2353 and NAC 453.440;

(d) ~~Places~~ *Includes* on ~~the face of the~~ *any* prescription ~~if it is printed from the computer system of the practitioner or the pharmacy to which the practitioner transmits the prescription, or if it is displayed on the monitor of the computer of the~~ *that is transmitted to a* pharmacy ~~or~~ *a* ~~mark~~ *field containing information* that uniquely identifies the practitioner ; ~~including~~

~~without limitation, the practitioner's signature or a security code which is known to or verifiable by the pharmacy;†~~

(e) Requires the practitioner, before the computer system places the words "Dispense As Written" on the face of the prescription, to make a specific entry into the computer system for the prescription; and

(f) Except as otherwise provided in subsection 3, transmits to the pharmacy specified by the patient the prescription and any other confidential information relating to the patient in a manner that ensures that the prescription or other confidential information may not be altered by a person other than the pharmacist.

3. The provisions of paragraph (f) of subsection 2 do not prohibit a practitioner from using a routing company to transmit a prescription pursuant to this section. A routing company:

(a) May, for the purpose of verifying an audit conducted of the routing company, store any prescription or other confidential information it receives or transmits pursuant to this subsection in a form that is secure and ensures the confidentiality of the information.

(b) May not add a provision to, delete a provision from or otherwise modify a prescription or any other confidential information that it receives or transmits pursuant to this subsection.

4. A pharmacy that receives a prescription from a practitioner using a computer system which is approved by the Board may fill that prescription if:

(a) The pharmacy prints a copy of the prescription and files the copy in the same manner in which the pharmacy files any other prescription maintained by it; or

(b) The computer system of the pharmacy:

(1) Maintains the prescription in a manner that ensures that the prescription is numbered consecutively in accordance with NAC 639.914;

(2) Is able to print a copy of the prescription; and

(3) Prohibits the modification of the prescription unless the computer system:

(I) Automatically prepares a notation within the records of the computer system indicating that the pharmacy has modified the prescription and automatically records the modification; and

(II) Requires the pharmacy to prepare a record indicating the identity of the person who modified the prescription.

5. If a pharmacy fills a prescription pursuant to paragraph (b) of subsection 4, a pharmacist employed by the pharmacy shall, each day:

(a) Store the prescription or cause the prescription to be stored on a tape, disc or other device that is used for the storage of information by a computer; and

(b) Store the tape, disc or device:

(1) At a location other than the pharmacy; or

(2) In any other manner that:

(I) Protects the tape, disc or device from loss or damage; and

(II) Ensures that any confidential information included in the tape, disc or device remains confidential.

6. If a practitioner prints a prescription using a computer system that is approved pursuant to this section, the practitioner shall ~~†~~

~~—(a) Except as otherwise provided in paragraph (b),† manually sign the printed prescription . †~~

~~or~~

~~—(b) If the prescription includes a mark that uniquely identifies the practitioner in accordance with paragraph (d) of subsection 2, print the prescription on security paper.†~~

7. A practitioner may transmit a prescription or any other confidential information relating to a patient to an insurer or any entity other than a pharmacy pursuant to this section if, before transmitting the prescription or confidential information:

(a) The practitioner submits a written notice to the patient:

(1) Identifying the insurer or entity; and

(2) Indicating that the practitioner intends to transmit the prescription or confidential information to the insurer or entity; and

(b) The patient consents in writing to the transmission of the prescription or confidential information to:

(1) The insurer or entity; and

(2) The pharmacy specified by the patient pursuant to this section.

8. The provisions of this section do not prohibit a computer system that is approved pursuant to this section from being used to transmit:

(a) The ICD code set forth in the most recent revision of the *International Classification of Diseases*; or

(b) Any other information that is not related to the issuance, filling or transmission of a prescription for a patient or the transmission of any confidential information relating to the patient pursuant to this section.

9. As used in this section ~~†~~

~~—(a) “Routing†~~, “*routing* company” means any business that:

~~†(1)†~~ (a) Receives a prescription or any other confidential information from a practitioner in accordance with a contract between:

~~(H)~~ (1) The routing company and the practitioner or a company that provides computer software for the management of the practitioner's practice; or

~~(H)~~ (2) A patient of the practitioner and a third-party payor; and

~~(2)~~ (b) Transmits the prescription or confidential information:

~~(H)~~ (1) Directly to the pharmacy specified by the patient; or

~~(H)~~ (2) Through the company that provides computer software for the management of the business operations of the pharmacy.

~~(b) "Security paper" means any paper that is approved by the staff of the Board and that includes features which ensure that the paper:~~

~~—(1) May not be duplicated without creating an indication on the paper that the paper has been duplicated; and~~

~~—(2) May be authenticated as having been issued by a practitioner or the office of the practitioner.]~~

Sec. 2. NAC 639.7105 is hereby amended to read as follows:

639.7105 Except as otherwise provided in NAC 639.711:

1. A prescription for a dangerous drug or a controlled substance listed in schedule II, III, IV or V may be transmitted *to a pharmacy* electronically by a practitioner ~~[to a pharmacy.]~~ *or, if the prescription is for a dangerous drug, the designated agent of the practitioner, if the patient:*

(a) Consents to the transmission of the prescription electronically; and

(b) Approves the pharmacy where the prescription will be transmitted.

2. A practitioner shall not transmit a prescription ~~[electronically]~~ *for a controlled substance* to a pharmacy *electronically* unless:

(a) The practitioner is the only person who will have access to the prescription until it is received by the pharmacy; *and*

(b) ~~The patient:~~

~~—(1) Consents to the transmission of the prescription electronically; and~~

~~—(2) Approves the pharmacy where the prescription will be transmitted; and~~

~~—(c)~~ All requirements of 21 C.F.R. Part 1311 are satisfied.

3. *The designated agent of a practitioner shall not transmit a prescription for a dangerous drug to a pharmacy electronically unless:*

(a) The practitioner prescribes the dangerous drug;

(b) The designated agent receives training from the practitioner regarding the electronic transmission of prescriptions and the practitioner keeps written documentation of such training at his or her office; and

(c) The practitioner documents in the medical record of the patient for whom the prescription is being transmitted electronically the intention of the practitioner to prescribe the dangerous drug and to have his or her designated agent transmit the prescription electronically.

4. *If the designated agent of a practitioner transmits a prescription electronically to a pharmacy, the practitioner shall review the electronic prescription file not later than 24 hours after the electronic transmission.*

5. In addition to the requirements set forth in NRS 639.2353 and 639.2589, a prescription that is transmitted electronically to a pharmacy must include:

(a) The telephone number of the prescribing practitioner;

(b) The time and date of the transmission; and

(c) The name of the pharmacy to which the prescription is sent.

~~14.1~~ 6. In addition to the requirements set forth in subsection ~~13.1~~ 5 and NRS 639.2353 and 639.2589, a prescription for a controlled substance that is transmitted electronically to a pharmacy must include:

(a) The registration number from the Drug Enforcement Administration of the prescribing practitioner; and

(b) If the technological capability exists to require such information to be transmitted electronically:

(1) The Nevada controlled substance registration number of the prescribing practitioner;

(2) The indication for use or the diagnosis code; and

(3) The date of the last physical examination of the patient.

~~15.1~~ 7. A pharmacist who receives a prescription that is transmitted electronically shall keep a paper or electronic copy of the prescription for at least 2 years after the pharmacist receives the prescription. The copy of the prescription that is kept must be readily accessible to:

(a) Personnel of the pharmacy who are authorized to access records of prescriptions kept by the pharmacy; and

(b) Members, employees, agents and designees of the Board.

~~16.1~~ 8. A pharmacist shall not dispense a prescription that is transmitted electronically until the pharmacist determines that the prescription complies with the requirements of state and federal law.

~~17.1~~ 9. A prescription that is transmitted and complies with the provisions of this section shall be deemed an original prescription.

~~18.1~~ 10. The Board may suspend the privilege of a practitioner to transmit prescriptions electronically *or take any other appropriate action* if the Board reasonably suspects that the practitioner *or the designated agent of the practitioner* has transmitted a prescription electronically that is:

- (a) Unlawful;
- (b) Fraudulent; or
- (c) Not for a legitimate medical purpose.