

American Academy of Pediatrics, District II
American Congress of Obstetricians & Gynecologists
Continuing Care Leadership Coalition (CCLC)
Leading Age New York
Medical Society of the State of New York
New York Chapter, American College of Physicians
New York State Academy of Family Physicians
New York State Dental Association
New York State Health Facilities Association
New York State Ophthalmological Society
New York State Psychiatric Association
New York State Society of Otolaryngology- Head and Neck Surgery
New York State Society of Orthopaedic Surgery
New York State Podiatric Medical Association
New York State Radiological Society
New York State Society of Physician Assistants
NYS Society of Plastic Surgeons Inc

January 8, 2015

Acting Commissioner Howard A. Zucker, MD, JD
NYS Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

Dear Commissioner Zucker,

We write to urge your consideration of action to remedy the concerns of the members of the organizations listed below regarding the March 27, 2015 effective date of the e-prescribing mandate enacted into law as part of the I-STOP legislation. While we recognize the important efficiencies and patient safety enhancements which can be achieved through electronic prescribing, it is quite concerning that many EHR vendors, including several with significant market share in New York State, are not yet certified for electronic prescribing of controlled substances (EPCS) and will not be certified in most cases until sometime in the first quarter of 2015. This is quite concerning for all prescribers, particularly large group and institutional prescribers whose systems must be tested and re-tested to remove operational flaws before the installation and implementation of software updates.

Nursing homes and assisted living providers face some unique challenges in ensuring safe and successful implementation of the NYS E-Prescribing law in these settings. Specifically, many of these providers have a system of medical orders for residents in which nurses interface with the prescriber (who is often not on-site) and the pharmacy to ensure medications are timely received by residents and properly recorded in their medication administration records. Nurses currently take telephone orders which are acted upon by the pharmacy immediately with a physician co-signature within 72 hours. The new law will disrupt this process, significantly changing the work flow and documentation flow among prescribers, nurses and pharmacies.

In addition, at least half of the state's nursing homes have no EHR system – let alone one capable of e-prescribing – nor the funds to implement one. Without compatible software linked with an EHR, the nursing home may not be aware of the communication between prescriber and pharmacy, leading to possible delays in treatment and transcription errors. Finally, nursing homes, pharmacies, EHR vendors and prescribers may be finalizing their individual parts of the process, but the interfaces among them will not be fully completed, tested and disseminated to safely proceed by March 27, 2015. Assisted living settings are even less likely to have electronic systems that are capable of communication with a pharmacy and prescriber. This circumstance can create the potential for miscommunication that ultimately jeopardizes the care of the resident.

We believe that prescribers who through no fault of their own cannot be compliant with the e-prescribing mandate by the March 27th effective date should be held harmless from penalty. Regrettably, the law does not provide providers with such protection. Consequently, we write to encourage you to take action to protect providers from liability if they are not compliant with the e-prescribing mandate on March 27th. The easiest and most uniform action would be to grant an extension of the effective date for a period of time. We recommend one year. In lieu of taking such action, we recommend that you issue a letter suspending enforcement of the law for a period of time. Similar action was taken when the NYS Immunization Information System (NYSIIS) was first implemented (see attached letter).

Moreover, there are a number of prescribers who write only a few prescriptions a year. As the waiver process is developed we encourage you to consider including as an example of an acceptable exigent circumstance which qualifies for a waiver those instances where the prescriber prescribes less than 25 prescriptions per year. The overall expense for low volume prescribers, including software, maintenance, updating and training personnel will be burdensome and could potentially be in the range of hundreds of dollars per prescription.

In addition, we encourage you to consider the following actions on behalf of prescribers for residents/ patients in nursing home and assisted living settings:

1. An ongoing or time-limited exclusion from E-prescribing requirements for prescriptions furnished in these settings;
or
2. A one-year delay in the implementation of e-prescribing requirements for prescribers of medications to patients/residents in these settings under the Commissioner's waiver authority to provide sufficient time to establish, test and educate staff on new ordering systems and revise related work and documentation flows; and
3. Financial support for acquisition and deployment of EHR technology by nursing homes and assisted living facilities, which were not eligible for meaningful use incentives and most HEAL-NY technology funding.

Lastly, we encourage your consideration of a public education campaign which will educate the public as to the changes which will be encountered as they seek care from providers in all healthcare settings. For some patients, the elimination of paper prescriptions may be somewhat concerning if not confusing and disempowering. It would be helpful for the state to begin to make patients aware of the positive reasons for the change while at the same time addressing concerns they may have about accessing needed medications from the pharmacy of their choice.

We look forward to meeting with you as soon as possible to more fully address these concerns.

Sincerely,

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