HHR/DHP E-Prescribing Workgroup

Wednesday, August 2, 2017
Perimeter Center, 2nd Floor Conference Center, Board Room 2
Henrico, Virginia

******DRAFT***MEETING MINUTES***

Workgroup Members Present

David Brown, DC
Department of Health Professions, Director

Caroline Juran
Board of Pharmacy, Executive Director

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

Ruth A. Carter
Drug Enforcement Administration

Tyler Cox
HCA Hospitals

Carol Forster, MD
Kaiser Permanente

Kelly Gottschalk, DVM
Virginia Veterinary Medical Association

Richard Grossman
Virginia Council of Nurse Practitioners

Stephanie Lynch
Virginia Association of Health Plans

Rusty Maney
Virginia Association of Chain Drug Stores

Jodi Manz, MSW
Policy Advisor, Office of the Secretary of Health & Human Resources

Johnny Moore
Virginia Pharmacists Association

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

Alternate Members Present

Lauren Bates-Rowe
Medical Society of Virginia

Workgroup Members Absent

Barbara Brown, Ph.D.
Virginia Hospital & Healthcare Association

Ralston King
Medical Society of Virginia

Staff Present

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

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Opening Remarks and Approval of Agenda:
David E. Brown, DC, Director, Department of Health Professions

The meeting was called to order at 9:10am. Dr. Brown informed the members that the Secretary of Health and Human Resources, Dr. Hazel, was unable to attend the meeting. Dr. Brown asked that the members introduce themselves. Following the introductions, Dr. Brown provided emergency egress information and then asked if there were any comments on or changes to the agenda; there were none.

Call for Public Comment:

Dr. Brown asked if anyone in the audience wished to make any comments; there were none.

Overview of E-Prescribing Requirements:

Federal Regulations

Dr. Brown requested that Ms. Juran provide an overview. Ms. Juran provided a brief recap of the federal regulations (in the agenda packet on pages 1-20) and asked that Ms. Carter elaborate if needed.

Ms. Juran indicated that the goal of the meeting is to accomplish as much of the agenda as possible. A second meeting will be held on August 29, 2017, if necessary.

There appears to be some confusion as to whether prescriptions for drugs in Schedules II-V may be transmitted electronically. Ms. Juran clarified that federal regulations have authorized electronic transmission of prescriptions for drugs in Schedules II-V since 2010. Shortly thereafter, the Board of Pharmacy adopted State regulation authorizing the electronic transmission of prescriptions for drugs in Schedules II-VI. Schedule II through V must be transmitted in compliance with federal regulations.

HB2165

Ms. Juran discussed HB 2165 (in the agenda packet on pages 21-26), in particular:

- Line 126 - Amends the definition section by deleting the term “electronic transmission prescription” and simply defining the term “electronic prescription” which more closely mirrors the federal definition and the definition written into board regulations
- Line 289 – requires a prescription for a controlled substance that contains an opiate to be issued as an electronic prescription
- Line 332 – states no pharmacist shall dispense such a prescription unless issued as an electronic prescription
- HB2165 contains two enactment clauses:
    - Line 334 - First enactment - Mandate for prescriptions for a controlled substance that contains an opiate to be issued as an electronic prescription to become effective 7/1/2020;
    - Line 335 – Second enactment - Workgroup to be convened with an interim report due to legislators by November 1, 2017 and a final report by November 1, 2018; Workgroup to evaluate the hardships on prescribers, inability of prescribers to

comply with deadline and make recommendations to the General Assembly for any extension or exemption processes relative to compliance or disruptions due to natural or manmade disasters or technology gaps, failures or interruptions of services.

Virginia Statistics

Mr. Whittemore provided an overview of the Virginia Statistics found on page 27 of the agenda packet using Surescripts network data. The statistics are representative of the current state of e-prescribing in the Commonwealth. There are two types of prescribers shown: Active E-Prescribers (prescribers who have sent e-prescriptions to pharmacies using Surescripts network in the last 30 days using their EHR software applications) and Active E-Prescribers EPCS Enabled (prescribers who use an EHR software that is Electronic Prescriptions for Controlled Substances certified and audit approved). As of June 2017, Mr. Whittemore reported that 56.8% of Virginia prescribers are active E-prescribers with 6.3% EPCS enabled. Nationally, 17.1% of prescribers are EPCS enabled. Of the Active E-Prescribers, 95% use software that is currently certified, but this does not mean that the software has been downloaded. Over 300 electronic medical records are certified. Mr. Whittemore further reported that 97.5% of Virginia pharmacies are active eRx pharmacies (pharmacies that are ready and processing e-prescriptions from prescribers' applications) and that 90.3% are EPCS enabled pharmacies (pharmacies with certified and audit approved software ready to receive EPCS transactions from prescribers). The percentage of EPCS enabled pharmacies for Virginia reflects favorably with the national number of 90.5%.

ACTION ITEM: Mr. Whittemore has asked his colleagues to generate an analysis by county for the workgroup.

Mr. Whittemore indicated that some pharmacies have not embraced the technology and some vendors have chosen not to provide e-prescribing for controlled substances (approximately 50 vendors serve the national market).

Dr. Gottschalk inquired of Mr. Whittemore if veterinarians are eligible to transmit; he was unsure. Dr. Gottschalk further indicated that some electronic prescription formats do not allow for the name of species or client's name and therefore, are not veterinarian specific, so there is some concern for mandating veterinarian use of e-prescribing.

Dr. Forster inquired of Mr. Whittemore as to whether Kaiser Permanente was included in the numbers. Mr. Whittemore indicated that it was not included as it is a closed network, so there are approximately 700 providers not included in the numbers.

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Ms. Juran inquired of Ms. Carter as to whether the electronic transmission of a prescription to an in-house hospital pharmacy must comply with federal rules for electronically transmitting prescriptions. Ms. Carter indicated later in the meeting that the rules for electronically transmitting a prescription do not apply in an inpatient hospital setting as the prescribing is treated as an "order" and not a "prescription". If the electronic prescribing of a medication is being transmitted to a pharmacy other than the inpatient hospital pharmacy, then it does have to comply.

New York Mandate

Dr. Brown indicated that the state of New York has already mandated electronic prescribing and referred everyone to the FAQs in the agenda packet at pages 28-32. Ms. Juran provided that New York's mandate applies to all controlled and non-controlled substances and was part of the 2013 I-STOP law designed to curb prescription drug abuse. Exceptions to New York's mandate can be found on page 32, and Ms. Juran indicated that the workgroup may want to use the list as a starting point if it felt similar exemptions were necessary.

The workgroup discussed the first exception: "Approved waiver from electronic prescribing." The waiver is for one year, and the practitioner must reapply as to why a continued waiver is needed. It can be for economic hardship (e.g., single provider) or technological challenges. Mr. Whittemore indicated that in the first year there were 6,200 waivers related to approximately 19,000 practitioners (New York has approximately 103,000); in the second year there were 3,128 waivers related to approximately 8,620 practitioners.

Dr. Brown inquired as to whether there were any questions as to what New York has done. The following concerns were expressed:

- Cost for individual practitioners and hospitals (each physician would need a license)
- Hospitals sending to the correct pharmacy
- Rural dentists – is there an exception?
- Community volunteer clinics – is there an exception?

ACTION ITEM: There is a lot of variability of cost in the physician market, and Ms. Bates-Rowe will reach out to the New York medical society to identify a range of costs.

Dr. Brown inquired of the difficulty in obtaining the two-factor credential. Dr. Forster explained Kaiser Permanente's process. There is a password to access the system. If the prescription is for a controlled substance, a popup will appear requesting the authentication. The code can be obtained through use of a key fob or app on iPhone. It takes approximately two seconds to do. The identity proofing process takes some time, but once it is done, the process is easy.

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Challenges for Prescribers:

The challenges identified include:

- Veterinarians generally do not have Electronic Medical Records (EMR) and should be exempted from the mandate.
    - Seven states have adopted e-prescribing and exempt veterinarians.
    - Veterinarian prescriptions go through the Prescription Monitoring Program (PMP). The PMP is working on species codes.
- No access to Internet in some areas of the Commonwealth.
- Cost of obtaining a system or activating a system that already has the capability for e-prescribing.
- Exemptions for cancer or hospice patients should be considered.
- Majority of prescribers have EMR in place but not the component to e-prescribing in accordance with federal rules.
- Licensing fees for EMR are already being paid. There may be an additional cost; how much depends on the vendor. Mr. Whittemore indicated there is a table on Surescripts' website that specifies vendor functionalities.

ACTION ITEM: Ms. Lynch may be able to provide additional information regarding additional costs for EMRs.

- Will there be penalties (e.g., reduced Medicaid/Medicare payments) if EMR and e-prescribing are not done?
- HB2165 relates to opiates only. Providers may not always know the item prescribed is an opiate.

It was noted that any exemptions should possibly be captured in regulations.

Challenges for Dispensers:

It was noted that pharmacies are ahead of the curve. Challenges identified include:

- With prescribers possibly obtaining waivers exempting them from an e-prescribing mandate, determining if a prescription has been issued in a compliant manner should not be up to the pharmacist.
    - New York states that the pharmacist is not required to verify the reason for a written or oral prescription.
- If prescription is sent electronically to the wrong pharmacy, this may cause patient harm. Patient may have to go back to the provider and get a handwritten prescription.
    - Would pharmacist have to contact provider to determine if valid?

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- Could manner of transmission be challenged on third-party insurance audit of the pharmacy? Are there financial protections for the pharmacy that could be implemented?

The workgroup took a 15-minute break.

Exceptions to E-Prescribing Identified in New York:

Dr. Brown announced that the workgroup would go through the New York exceptions line by line.

1. Approved waiver from electronic prescribing+
   - Previously discussed
2. Nursing home or RHCF (Residential Health Care Facility) defined in Article 2801 of the Public Health Law

ACTION ITEM: Ms. Juran will look into how New York defines RHCF and how it relates to the Virginia's licensing standards.

3. Complicated directions
   - No comment
4. Directions longer than 140 characters
   - No comment
5. Compounded prescriptions containing two (2) or more products
   - No comment
6. Compounded infusion prescriptions containing two (2) or more products
   - Per Mr. Whittemore, the next NCPDP version will fix exemptions #4, 5, and 6, but it will be into 2018 before ready. There will be a change from 140 to 1,000 characters, and there will be additional fields for compounding prescriptions to be inputted accurately and completely.
7. A prescription containing certain elements required by the federal Food and Drug Administration (FDA), such as an attachment
   - Mr. Maney indicated this exemption has to do with specialty medications regarding risk mitigation strategies that are currently in place. Mr. Whittemore stated that the electronic prescribing standard does not provide for attachments.
8. Approved protocols under expedited partner therapy (EPT)
   - Ms. Juran questioned if this exemption was necessary for Virginia since EPT is not currently authorized in Virginia. Mr. Whittemore indicated that there is guidance on how to handle this in states which authorize it.
9. Approved protocols under collaborative drug management

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- No comment

10. Response to a public health emergency that would allow a non-patient specific prescription
    - No comment
11. Approved research protocol
    - No comment
12. A non-patient specific prescription for an opioid antagonist (e.g., naloxone)
    - Do we need an exception since we have a standing order?

ACTION ITEM: Ms. Juran will work with board counsel regarding New York's exemption #12 since Virginia's language for dispensing an opioid antagonist is different.

13. Veterinarian
    - There is an obvious need for an exception.
14. Temporary technical failure
    - Straightforward, no comment
15. Temporary electronic failure
    - Straightforward, no comment
16. The prescription will be dispensed out-of-state, including federal installations such as Veteran Administration Facilities, Fort Drum & West Point
    - If going out of state and electronic prescription is printed and given to the patient, it must be signed.
    - Consideration for people who live near the border may be necessary.
17. Patient harm if the practitioner determines that an electronic prescription cannot be issued in a timely manner and that the patient's condition is at risk
    - This may be an emergency situation in which the patient would not know which pharmacy is open.
    - In the case of a house call/hospice/palliative, e-prescribing would be dependent on access to the Internet.
        - Need to balance taking care of the patient against diversion issue (e.g., person filing prescription for person who already died).
        - Do e-prescribing systems have mobile capability? Yes.
        - How many areas of the state do not have Internet capability?
    - Mobile clinics (e.g., volunteer dental activities) may need to have an exception.

Public Comment:

Dr. Brown again asked if anyone wished to offer public comment.

Chuck Duvall, Virginia Dental Association, stated that during the Southwest Virginia dental clinic most prescribing was Extra Strength Tylenol, not opiates. Dentists may prescribe opiates

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two times a month and yet they have to pay for these systems; the workgroup may want to look at an exception for this. He thought it was a great discussion and learned a lot.

ACTION ITEM: Mr. Duvall will get figures on potential costs for dentists to provide to the workgroup.

Lauren Schmitt, Virginia Association of Health System Pharmacists requested confirmation of requirements for transmitting inpatient orders in the hospital setting.

Brent Rawlings, Virginia Hospital & Healthcare Association (VHHA), was grateful for the work being done by the committee. In the future, he will represent VHHA as an alternate.

Next Steps:

Dr. Brown inquired of the workgroup what the Commonwealth needs to do to implement the Act and what are next steps.

ACTION ITEM: Mr. Whittemore will look into what categories New York's first year waivers were. He distributed a handout which included e-prescribing statistics for New York prescribers and pharmacies.

Should there be an exemption for prescribers who write less than 25 prescriptions per year?

Since funding will be a challenge, look at 90/10 Hi Tech matching funds. Strong arguments from CMS (U.S. Centers for Medicare & Medicaid Services) that it would be complimentary to funding received to implement EMR into PMP.

ACTION ITEM: Ms. Lynch will look into the possibility of 90/10 Hi Tech matching funds.

Electronic prescribing could support efforts toward electronic prior authorizations.

There was a brief discussion about possibly expanding e-prescribing to all Schedule II-V drugs with Dr. Forster noting her support. In terms of technology, opiates would not be segregated. ADHD drugs and benzodiazepines are also being abused.

ACTION ITEM: Mr. Moore indicated that VPhA will poll it members regarding impact of expanding mandate to all drug Schedules.

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The appropriateness of a 2020 deadline was discussed. Some members felt it could be implemented earlier (possibly 2019). Some felt 2020 allows time for possibly addressing state budgetary needs and/or applying for funding.

Regulation seems more appropriate versus a guidance document for DHP.

ACTION ITEM: Ms. Juran will follow-up to see if New York placed exemptions in regulation or some form of guidance.

Impact on telemedicine also needs to be considered.

Dr. Brown indicated that the next meeting will be August 29, 2017. If a member is unable to attend, they should designate someone else to attend in their place.

ACTION ITEM: Dr. Brown requested that the members talk to stakeholders to determine if e-prescribing should be limited to opiates.

Adjourn:
With no further business to discuss, Dr. Brown adjourned the meeting at 11:40am.

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David E. Brown, DC
Director

Date

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