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TTY: 771
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February 29, 2024

Susan R. Donovan, Chair
House Committee on Health and Human Services
State House
82 Smith St.
Providence, RI 02903

RE: H 7566 - An Act Relating to Food and Drugs – Uniform Controlled Substances Act

Dear Chair Donovan:

Please accept this letter regarding H 7566, legislation that would require the Rhode Island Department of Health (RIDOH) to amend its rules and regulations to allow for DEA-registered pharmacies to transfer electronic prescriptions at a patient's request (21 CFR Part 1306). This Act would take effect upon passage.

RIDOH applauds the intent of H 7566 and is in conceptual support of its proposed provisions, however, RIDOH offers amendments for the Committee to consider. As of August 28, 2023, the electronic transfer of prescriptions for controlled substances (EPCSs) between pharmacies has been allowed by the federal Drug Enforcement Administration (DEA) under a new final rule published in July 2023 ([final rule](#)). The rule states that, if allowable under state or other applicable law, EPCS in Schedules II-V may be transferred between pharmacies for initial filing on a one-time basis upon request from the patient. The transfer must be communicated directly between the licensed pharmacies and the prescription must remain unaltered in its electronic form.

While this rule represents a critical step toward allowing the electronic transfer of EPCs, the health information technology industry is not yet able to support these transfers until further action is taken by the federal Centers for Medicare and Medicaid Services (CMS). CMS has the responsibility of designating which standard the Health Information Technology (HIT) industry must use to support electronic prescribing and related transactions for Medicare, and this includes electronic prescription transfers. As of February 2024, while DEA rules technically do allow for the electronic transfers of EPCSs, action from CMS is still needed before HIT entities can proceed with the implementation of the HIT technology necessary to support transfers of EPSs. It is uncertain when CMS will make such an announcement.

Rhode Island's pharmacists are aware of the federal rule allowing them to make electronic transfers since the federal rule was published. *However, a major barrier preventing pharmacies from being able to fully implement the rule in Rhode Island is that the technology to do so is not in place in all pharmacies to allow for electronic transfers between pharmacies.*

Additionally, RIDOH cannot amend its regulations by November 1, 2024, to reflect the DEA rule to permit the transfer of electronic prescriptions as an average of six to nine months is needed to promulgate regulations.

PROPOSED AMENDMENT:

(r)(1) Effective January 1, 2025, in recognition of the United States Drug Enforcement Agency (DEA) revised regulations regarding electronic prescription refills permitting DEA registered pharmacies to transfer electronic prescriptions at a patient's request, the department of health shall amend its regulations to reflect this change ~~no later than November 1, 2024~~ [following the Centers for Medicare and Medicaid's designation of the standard the pharmacy industry must use to support Medicare electronic prescribing and related transactions](#) to permit the transfer of electronic prescriptions. ~~(2) The department shall provide all DEA registered pharmacies with notice of this provision no later than December 1, 2024.~~

Thank you for the opportunity to comment on this legislation.

Sincerely,



Utpala Bandy, MD, MPH
Interim Director

CC: The Honorable Members of the House Committee on Health and Human Services
The Honorable Kathleen A. Fogarty
Nicole McCarty, Chief Legal Counsel
Lynne Urbani, Director of House Policy