

Kansas Board of Pharmacy Statement on e-prescribing Waivers (K.S.A. § 65-16,128)

Approved by the Kansas State Board of Pharmacy: September 28, 2023

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Guidance:

- I. Purpose
 - a. The purpose of this guidance is to clarify when a prescriber must request a waiver before non-electronically prescribing a controlled substance in schedule II-V that contains an opiate.
- II. Statutory Authority
 - a. See K.S.A. § 65-1637 and 65-16,128
- III. Guidance
 - a. The Kansas Board of Pharmacy interprets K.S.A. § 65-16,128 in the following manner:
 - i. **Prescribers:**
 1. If the prescriber makes a self-determination that they qualify for one of the provisions laid out in (a)(1) or (a)(3)-(a)(8), the prescriber **shall** automatically be exempt from the electronic transmission requirement, and the prescriber **shall not** be required to request a waiver from the Kansas Board of Pharmacy. The prescriber is not required to make any indication on the prescription but may indicate “**Exempt.**” (For the pharmacist.)
 2. If the prescriber believes that they cannot comply with the electronic prescribing requirements due to one of the reasons laid out in subsection (a)(2), the prescriber **shall** request a waiver from the electronic transmission requirement as set forth in subsection (b). The Kansas Board of Pharmacy shall establish the forms and criteria necessary to apply for and be granted the waiver. The prescriber **shall** indicate on the prescription “**Waiver.**”
 3. The Board reinforces their previous guidance published on December 2, 2021 – “Each pharmacist must use their professional judgment in dispensing valid prescriptions.” The pharmacist may exercise their professional judgment in declining to dispense a prescription.
 - ii. **Pharmacists:**
 1. If the pharmacist receives a non-electronic prescription for a controlled substance in schedules II-V that contains an opiate the pharmacist **shall not** be required to verify the validity of any exemption or waiver, either with the prescriber or the Board.
 2. The pharmacist has a corresponding responsibility to exercise their professional judgment and ensure that the prescription is legitimate prior to dispensing a prescription.

Relevant Law:

K.S.A. 65-16,128

(a) Every prescription order issued for a controlled substance in schedules II-V that contains an opiate, as described in the uniform controlled substances act, shall be transmitted electronically unless:

- (1) Electronic prescription orders are not possible due to technological or electronic system failures;
- (2) electronic prescribing is not available to the prescriber due to economic hardship or technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances exist, as demonstrated by the prescriber;
- (3) the prescription order is for a compounded preparation containing two or more components or requires information that makes electronic submission impractical, such as complicated or lengthy instructions for use;
- (4) the prescription order is issued by a licensed veterinarian;
- (5) the prescriber reasonably determines that it would be impractical for the patient to obtain the substances prescribed by electronic prescription in a timely manner, and such delay would adversely impact the patient's medical condition;
- (6) the prescription order is issued pursuant to drug research or drug therapy protocols;
- (7) the prescription order is by a prescriber who issues 50 or fewer prescription orders per year for controlled substances that contain opiates; or
- (8) the United States food and drug administration requires the prescription order to contain elements that are not compatible or possible with electronic prescriptions.

(b)

(1) A prescriber may request a waiver from the provisions of subsection (a) for a period not to exceed six months if such prescriber cannot comply with subsection (a) due to economic hardship, technological limitations that reasonably are not within the prescriber's control or other circumstance demonstrated by the prescriber...

(2) If a prescriber prescribes a controlled substance by non-electronic prescription, such prescriber shall indicate the prescription is made pursuant to a waiver granted pursuant to this section. A pharmacist shall not be required to verify the validity of any waiver...

K.S.A. § 65-1637

(a) The pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of any prescription order consistent with federal and state laws and rules and regulations. Except as provided in K.S.A. 65-1635(e), and amendments thereto, and as may otherwise be provided by law, a pharmacist shall not dispense a prescription drug if the pharmacist, in the exercise of professional judgment, determines that the prescription is not a valid prescription order.

...

(n) Except as provided in K.S.A. 65-16(e), and amendments thereto, and as may otherwise be provided by law, nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if, in the pharmacist's professional judgment and discretion, such pharmacist is of the opinion that it should not be filled or refilled.

