

TO: ABARCA PARTICIPATING NETWORK PHARMACIES
DATE: MARCH 25, 2020
SUBJECT: TELEMEDICINE LOCAL RULE FLEXIBILIZATION, PRESCRIPTION TRANSMISSION AND MEDICATION DISPENSING BY PHARMACIES¹

BRIEF SUMMARY:

What is permitted during this emergency as a preventive measure to avoid possible virus transmission?

- ❖ **Beneficiary Signatures:** We have determined **not** to require evidence of beneficiary signatures as proof of prescription drug dispensing, during our audit and monitoring processes (subject to documentation processes outlined in this communication).
- ❖ **Prescriptions Sent by Patients:** Patient may transmit a prescription to the pharmacy by oral request, fax, digital image (photo) or electronic communication. **In these cases, the patient or representative must provide the original prescription to the pharmacy, when prescription drug is received.**
- ❖ **Prescriptions Sent by Prescribers:** If a prescribing physician cannot directly send an electronic prescription (e-prescription) to the pharmacy, the prescribing physician may send the prescription to the pharmacy by photo or any other electronic method **without having to receive the original prescription from the prescriber.**
- ❖ **Non-Chronic Medication Fills (non-maintenance use) Without Prescription.** By showing an empty flask where patient identity and dosage are specified, that pharmacy may dispense a **single 30-day** fill of the same medication.
- ❖ **Chronic Medication Fills (maintenance use) Without Prescription** By showing an empty flask where patient identity and dosage are specified, the pharmacy may dispense fills of the same medication.

Dear Pharmacy Provider:

Receive our greatest regards. It is of utmost importance for us to keep you informed about any advancements related to the novel Coronavirus (COVID-19) and the changes we will be assuming to ensure that our beneficiaries have adequate access to their medications. Some of the changes we would like to share, as follows:

¹ Applicability of the changes described herein will be effective during the COVID-10 emergency period. We will keep you informed of any changes or guidance made public by the Government.

I. SIGNATURE REQUIREMENT TO RECEIVE MEDICATIONS

As a preventive measure, and to avoid possible virus transmission, we have determined **not** to require evidence of beneficiary signatures as proof of prescription drug dispensing, during our audit and monitoring processes. Nevertheless, for us to responsibly avoid possible fraud, waste and abuse situations, we will be requesting the following:

- A. Pharmacies must document prescription drug dispensing in their dispensing log with the following note: ***Medication dispensed during emergency period***, including the date and time the dispensing took place. Should the pharmacy's system have the capability, the medication to be dispensed must also be scanned.

As a reminder, our audit activities (on-site and desk) have been suspended until further notice. However, we will continue our continuous claims monitoring for security purposes and to identify potential fraud, waste and abuse.

II. LEGAL AND REGULATORY CHANGES

On March 20, 2020, Honorable Wanda Vázquez Garced, Puerto Rico Governor, signed Senate Joint Resolution 491 (RCS 491) to make certain provisions of Law 168-2018, known as "Ley para el Uso de la Telemedicina en Puerto Rico", more flexible as part of the governmental efforts to combat the coronavirus (COVID-19) outbreak in Puerto Rico.

Among its dispositions, RCS 491 will allow the sending prescriptions, referrals or medical orders by physician by photo or any other electronic method **without having to present the original prescription afterwards**.

Below we analyze certain laws and regulations applicable to the sending of prescriptions to the pharmacy and how they interact with RCS 491:

A. PRESCRIPTION TRANSMISSION VIA PHOTO OR E-MAIL

1) *Pharmacy Law – Ordinary Cases*

Under the Pharmacy Act, and with the purpose of speeding up the prescription dispensing process, a patient or prescriber may transmit a prescription to the pharmacy by oral request, fax, digital image (photo) or electronic communication. **In these cases, the patient or representative must provide the original prescription to the pharmacy, when prescription drug is received.**²

2) *Pharmacy Law – Emergency Cases*

To tend to emergency cases, the Pharmacy Act and its Regulation, allows that a prescription be transmitted directly by a prescriber via oral request, fax, digital image (photo) or electronic communication to the pharmacy.

² Article 5.02(e) of Pharmacy Law, Law No. 247-2004; Article 8.05 of the Pharmacy Regulation, Regulation 8703.

The pharmacy must document the date and time in which the transmission was performed and dispense a limited amount that should not exceed the necessary amount for a period of five (5) days.

The prescriber must provide the pharmacy with the original prescription, no later than one-hundred and twenty (120) hours after the prescriptions' transmission. The original prescription must include the word "EMERGENCY".

For purposes of this section, an emergency case is defined as a situation where:

- a. The immediate administration of a medication is necessary for adequate patient treatment;
- b. There is no medication without prescription that constitutes an appropriate alternative for treatment; and
- c. It is not reasonably possible for the prescriber to provide or for the patient to obtain a prescription prior to the medication's dispensing.

The difference between Ordinary Cases and Emergency Cases is that in Ordinary Cases, the patient can send the prescription to the pharmacy by photo or any other electronic communication but the pharmacy cannot dispense the medication until the original prescription is provided.

In Emergency Cases, only the physician may send the prescription to the pharmacy by photo or any other electronic communication and patient may be dispensed a limited amount of medication, without the pharmacy receiving the original copy written by the physician (which has to send it within one-hundred and twenty 120 hours).

3) RCS 491 and its interaction with the Pharmacy Act

RCS 491 states that while COVID-19 emergency remains, every physician may send a **prescription, referral or medical order by photo or any other electronic method** and the service provider that receives is obliged to accept it.

RCS does not demand that the prescriber send the original prescription to the pharmacy within one-hundred and twenty (120) hours of sending the prescription by photo or electronic communication. In regards to this discrepancy with the Pharmacy Act, **RCS 491 establishes that it will prevail over any law, regulation or ruling to the contrary.**

Therefore, we understand that **during the validity of the COVID-19 emergency period**, a **prescriber** that sends a prescription to the pharmacy via photo or any other electronic communication is not obliged to provide the original copy to the pharmacy, as required by the Pharmacy Act.

B. MEDICATION REFILLS WITHOUT A VALID PRESCRIPTION

1) Pharmacy Act

Act No. 274-2018, which was adopted subsequent to Hurricane Maria, amended the Pharmacy Act to establish that when a state of emergency is declared by the Puerto Rico Governor, and a pharmacy receives a refill request, the pharmacy may only dispense a one-

time 30 days' supply emergency fill. In which cases, the pharmacist must consider the following:

- a. Prescription must not be for a Class I or II controlled substance; for Class III, IV and V, the pharmacist must comply with all dispositions set forth in the "Ley de Vigilancia de Recetas de Medicamentos Controlados" law, and using his/her professional judgement.
- b. That within the dispensing pharmacists' professional judgement, therapy interruption could reasonably produce unfavorable consequences for the patients' health; and
- c. The dispensing pharmacist will create a file and will document fills within the pharmacy's data system in accordance with applicable regulations.

2) RCS 491 and its interaction with the Pharmacy Act

RCS 491 states that during its validity, the pharmacy may dispense fills for chronic medications even when the patient does not have any available fills or a new prescription. For these purposes, the patient must show the empty medication flask where the patients' identity and dosage are specified. Medications classified as narcotics are excluded in accordance with federal and state laws and regulations.

The difference between the Pharmacy Act and RCS 491 is that the Pharmacy Act seems to allow fills for any type of medication, while RCS 491 limits itself to chronic medications (maintenance use). In addition, the Pharmacy Act limits dispensing to a one-time thirty (30) day fill, while RCS 491 seems to be broader in allowing multiple fills, if the patient shows the empty medication flask where patient identity and dosage are specified.

We greatly appreciate your continued collaboration and commitment with Puerto Rico,

Pharmacy Alliance Department