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| Proposed amendment – Drugs, Poisons and Controlled Substances Regulations 2017 (transmission of a digital image of a paper prescription in an emergency) |
| Stakeholder Consultation Paper December 2022 |
| OFFICIAL |

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# Proposal

The Victorian Department of Health (the department) proposes to amend the Drugs, Poisons and Controlled Substances Regulations 2017 (DPCS Regulations) to allow a medical practitioner, veterinary practitioner or dentist to issue an **emergency direction** to a pharmacist to supply a Schedule 4, Schedule 8 or Schedule 9 poison (medicine) by **transmitting a digital image of a paper prescription** to serve as an instruction. The proposal would also enable a nurse practitioner or authorised midwife to utilise the same mechanism (i.e. a digital image of a paper prescription) to issue an emergency direction to pharmacists to supply a Schedule 4 or Schedule 8 medicine. The same arrangement would apply to authorised optometrists or authorised podiatrists in the case of Schedule 4 medicines.

The amendment would provide a second mechanism, in addition to a verbal instruction, for a prescriber to issue an emergency instruction via a digital image of the paper prescription to a pharmacist when that prescriber is of the opinion an emergency exists.

The DPCS Regulations currently allow prescribers to issue verbal instructions to pharmacists in an emergency. If the prescriber issues a verbal instruction, they must follow up with written instructions confirming the verbal instructions. The amendment would clarify that the written instructions must be provided within **3 days** of providing the verbal instruction.

The amendment would also include minor technical amendments. These include clarifying that it is an offence to self-administer a Schedule 4, 8 or 9 poison obtained under false representation and specifying penalties in regulations 50, 51 and 52, which place restrictions on pharmacists selling or supplying Schedule 4, 8 or 9 poisons on a prescription.

# Current arrangements for issuing an instruction to a pharmacist in an emergency

Regulation 25 of the DPCS Regulations (see Appendix 1) currently authorises a prescriber to issue a verbal instruction to a pharmacist to supply a scheduled medicine to a patient in an emergency. The DPCS Regulations do not define ‘emergency’, though enable a prescriber to exercise their professional judgement when determining what may constitute an emergency scenario for the patient under their care. The purpose of regulation 25 is to enable supply of a scheduled medicine by a pharmacist without the delay that may occur if the patient is required to physically receive the paper prescription and provide that paper prescription to the pharmacist.

Regulation 25 states that the prescriber who issues a verbal instruction to a pharmacist in an emergency, **must as soon as practicable**, write an instruction that confirms the verbal instructions previously given, and send that instruction to the pharmacist. The written instruction will usually take the form of a prescription. The legal obligation to provide the written instruction rests with the prescriber. Pharmacists require the paper prescription to fulfil State requirements and to claim subsidises paid by the Australian Government for dispensing Pharmaceutical Benefits Scheme (PBS) items.

The department receives ongoing queries from prescribers and pharmacists to clarify what might be considered an acceptable duration for ‘as soon as practicable’.

In April 2020, Victoria enabled the use of electronic prescriptions as a lawful form of prescription for the supply of Schedule 4, Schedule 8 and Schedule 9 medicines. Electronic prescriptions now serve as a safe and effective means of issuing a prescription and are recognised under Commonwealth legislation as being eligible for medicines receiving funding under the PBS. Whilst the national electronic prescribing framework has been widely adopted in the community setting, it is acknowledged that not all prescribers have access to software capable of issuing an electronic prescription, and electronic prescriptions may not be suitable for some patients. For this reason, alternative mechanisms to provide an instruction to a pharmacist in an emergency to supply a scheduled medicine are warranted.

There is currently a Public Health Emergency Order (PHEO#4) in Victoria which enables a pharmacist employed or otherwise engaged by a hospital to sell or supply a Schedule 4 or Schedule 8 medicine based on a digital image of an original paper prescription emailed or faxed to them by a prescriber. PHEO#4 is in parallel to a similar Commonwealth arrangement that provides PBS funding for the medicines. Both PHEO#4 and the Commonwealth arrangement will cease on 31 March 2023.

# Proposed Conditions

Under the proposal a registered medical practitioner, nurse practitioner, dentist, authorised midwife, authorised optometrist or authorised podiatrist could elect to utilise either a verbal order **or** a digital image of paper prescription when issuing an instruction to a pharmacist in an emergency.

The proposed amendment is intended to be subject to the following conditions:

* the prescriber is of the opinion that an emergency exists;
* a valid paper prescription is written and signed by the prescriber;
* the digital image of the prescription is transmitted by the prescriber **directly** to a pharmacist or pharmacy of the patient’s choice (but not via the patient or any other intermediary) by email, Multimedia Messaging Service (MMS) or facsimile;
* the paper prescription is sent or directly supplied by the prescriber to the pharmacist within **3 days** of transmitting the digital image of the prescription.

In addition, to improve clarity and provide a consistent timeframe for provision of the written instruction following an instruction by either verbal instruction or an image of paper prescription it is proposed that regulation 25 be amended to require a prescriber to send the written instruction within **3 days** of providing the verbal instruction.

# Anticipated benefits for patients and health practitioners

It is anticipated that the proposed amendment will deliver the following benefits:

1. Improved patient safety by reducing communication errors resulting in incorrect medication name, dose, quantity or instructions;
2. Improved workflows for health practitioners, especially for telehealth services during emergencies; and
3. Reduced ambiguity for health practitioners by clearly stating the timeframe for providing the original paper prescription to the pharmacist after the prescriber issues an emergency instruction.

# Other jurisdictions

Most jurisdictions enable the transmission of a digital image of an original paper prescription for the purposes of an instruction for a pharmacist to supply a scheduled medicine in an emergency.

In New South Wales, in an emergency an authorised practitioner may direct a pharmacist to supply a Schedule 4 or Schedule 8 medicine to a patient by telephone, by electronic mail or by facsimile. Under this provision the authorised practitioner must follow-up the direction with the paper prescription to be sent to the pharmacist within 24 hours. If the prescription is not received by the pharmacist within 7 days a report must be made to the NSW Ministry of Health.

In Queensland, a digital image of a paper prescription may be sent to the patient’s pharmacy of choice by facsimile or as a scanned image, with the original paper prescription provided to the pharmacist within the specified timeframes:

* for Schedule 8 medicines, no later than the end of the next business day after the digital image was sent
* for other medicines, no later than 7 days after the digital image was sent.

The digital image of the prescription may only be sent to a pharmacy and must not be provided to patients. QLD Health state a digital image of a prescription provided by a patient to the pharmacist is not a lawful prescription.

# When the proposal will come into effect

The department is working towards having the proposed amendment in place prior to 31 March 2023, subject to the conclusion of stakeholder consultation and processes for regulation amendment.

# Consultation questions

The following questions seek to capture stakeholder views on the proposed amendment. Stakeholders are invited to provide written comment in response to these questions and any other matters relevant to the proposal.

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| Questions with solid fill | 1. Do you support the proposal to enable transmission of a digital image of a paper prescription from a prescriber to a pharmacist to provide an instruction to supply a scheduled medicine when the prescriber is of the opinion an emergency exists? If not, why? 2. Do you have any comments on what electronic mechanisms should be allowed for transmission for a digital image of a prescription? For example, email, Multimedia Messaging Service (MMS), facsimile, etc. 3. Do you have any comments on the proposal to introduce a 3 day time period for a prescriber to provide the original signed paper prescription (or other written instruction) to the pharmacist after either a verbal instruction or a digital image of the paper prescription is provided? |

# Due date for comments

Please provide comments in writing to Medicines and Poisons Regulation, Department of Health at [dpsc@health.vic.gov.au](mailto:dpsc@health.vic.gov.au) by **19 December 2022.**

# Appendix 1 - Existing Regulation 25

**Regulation 25 Emergency directions to pharmacists regarding supply**

*(1) A registered medical practitioner, veterinary practitioner or dentist may issue verbal instructions to a pharmacist to supply a Schedule 4 poison, Schedule 8 poison or Schedule 9 poison if, in the opinion of the registered medical practitioner, veterinary practitioner or dentist, an emergency exists.*

*(2) A nurse practitioner or an authorised midwife may issue verbal instructions to a pharmacist to supply a Schedule 4 poison or Schedule 8 poison if, in the opinion of the nurse practitioner or authorised midwife, an emergency exists.*

*(3) An authorised optometrist or an authorised podiatrist may issue verbal instructions to a pharmacist to supply a Schedule 4 poison if, in the opinion of the authorised optometrist or the authorised podiatrist, an emergency exists.*

*(4) A registered medical practitioner, veterinary practitioner, dentist, nurse practitioner, an authorised midwife, an authorised optometrist or an authorised podiatrist who issues verbal instructions pursuant to subregulation (1), (2) or (3), as the case requires, must as soon as practicable—*

*(a) write an instruction that indicates that it is in confirmation of the verbal instructions previously given; and*

*(b) send that instruction to the pharmacist.*

*5) For the purposes of subregulation (4), the written instruction may be a prescription, a chart instruction, or a written instruction of another kind.*