

MEMORANDUM

TO: Cheryl Harrison and Lynn Kolokowsky
Baptist Health System, Inc. (BHS)

FROM: Sarah Spurlock

DATE: July 19, 2019

RE: Use of Medical Assistants in the Prescription Refill Process – Kentucky Law

You asked for our assistance in requesting an opinion from the Kentucky Board of Medical Licensure (KBML) in connection with the use of medical assistants in the electronic prescription refill process. Specifically, you indicated BHS would like an opinion from the KBML on whether unlicensed medical assistants may facilitate a prescription refill without a provider's subsequent approval/sign-off if the request meets an established protocol, or automated criteria such as those established by Healthfinch or other similar technology. In preparing to draft a request for a KBML opinion, I identified two previous KBML opinions from 2002 and 2016 that are relevant to this question. These opinions are attached for your reference as Appendix A and Appendix B, respectively.

As discussed below, I interpret the attached opinions to prohibit the proposed use of medical assistants in the prescription refill process without subsequent approval/sign-off by a provider prior to the prescription refill being sent to the pharmacy. Further, I expect that the KBML would respond to a request by citing one or both of the existing opinions or otherwise confirming that the proposed use of medical assistants in the electronic prescription refill process would not be consistent with acceptable and prevailing medical practice. I am providing this information for further consideration by BHS, as I believe the existence of these KBML opinions negates the need for any further inquiry on this topic.

Question Presented

Is it permissible in Kentucky for a medical assistant, operating under the supervision of a licensed physician, to facilitate a refill without subsequent provider approval/sign-off in response

to a patient request or an electronic prescription refill request from a pharmacy if the patient's refill request meets the requirements of an established refill protocol?

Background

BHS physicians utilize Epic software for their electronic medical record in their physician offices. I understand that Healthfinch is software that works with Epic and runs established and customized protocols alerting medical assistants and providers if a patient has met all the parameters for receiving a refill. Refill requests primarily come electronically from pharmacies although they are sometimes called into the office by the patient. Currently, the prescription refill requests are electronically routed to either the medical assistant and/or the provider to refill with the provider being the final authorization/sign-off of the refill order. Refilling a prescription requires multiple clicks in the Epic system to provide information and send the refill approval to the pharmacy. In an effort to more quickly and efficiently manage refill requests, authorized prescribers (generally referred to in this memo as "providers") would like to utilize medical assistants to respond to electronic refill requests that satisfy established protocols. Use of protocols would be limited to routine medications that were originally prescribed by the provider. In this proposed scenario, a medical assistant who is under the supervision of a provider (and/or an automated software program such as Healthfinch) would confirm the patient meets the established protocol and perform the clicks in the Epic system, including the transmission of the refill to the pharmacy, which would result in the pharmacy refilling the prescription and distributing the medication to the patient. The physician/prescriber would not review or sign off on the refill. The refill would be ordered "per protocol, no co-sign required." We understand that all protocols would be reviewed by the Quality Committee to ensure that Medical Assistants are not making clinical assessments, evaluations, or interpretations in carrying out protocols.

Discussion

Kentucky statutes and regulations do not directly address medical assistants or tasks physicians may delegate to medical assistants. While not specifically mentioned in the Kentucky Medical Practice Act or the related regulations, the KBML has indirect control over medical assistants by virtue of its control over licensed physicians who supervise and delegate tasks to them. Accordingly, there have been KBML opinions issued over the years that relate to delegation of tasks by physicians to non-physicians, including medical assistants. The two KBML opinions most relevant for purposes of this memo are summarized below:

- **March 28, 2016** – The KBML issued an opinion addressing the question of whether medical practices could establish protocols to be implemented by nurses. One of the questions presented for the KBML's consideration involved nurses calling in refills based on a diagnosis previously made and treated by a licensed physician. The proposed scenario involved a patient's request to refill a non-controlled substance for a chronic illness, specifically, an asthma inhaler. The physician created protocols for certain medications that could be called in without first consulting the physician. Instead, the nurse would simply send an email to

the physician saying a prescription had been called in for the patient. The KBML concluded that the acceptable and prevailing practice of medicine requires nurses to communicate with the physician before carrying out physician-originated protocols.

- **March 8, 2002** – The KBML issued an opinion responding “no” to each of the following questions:
 - (1) As a group, if we made up a list of protocols and each physician signed them, could non-medical personnel give lab orders without discussing it with them individually first? I.e.; an order for a PT & INR when a patient has been discharged without a therapeutic level and the physician forgot to write the order.
 - (2) As a group again, if we made approved protocols that are signed by each physician can medications be phoned in via non-medical personnel? I.e.; a patient phones and is nauseated, could phenegran 25 mg Q-8hrs, be done, again without the prior consent or conversation of the physician.

While neither of these opinions address the specific question of the role that medical assistants may have in authorizing electronic prescription refill requests, they convey the position that a medical assistant may not carry out a protocol for a prescription refill absent physician/prescriber review or sign-off. In the 2002 opinion, the KBML rejected phoning in medication based on specific physician-approved protocols without prior consent or conversation with the physician. And, in the 2016 opinion, the KBML indicated that a nurse had to communicate with the physician prior to authorizing a refill for medication that met an approved protocol. Because the proposed practice in the 2016 opinion involved nurses and not medical assistants, we would expect the KBML to find the use of unlicensed medical assistants to be even less acceptable.

In addition to the KBML opinions, we reviewed a July 2017 letter from the CEO and Legal Counsel for the American Association of Legal Assistants, Donald A. Balasa, JD, MBA, addressing “what duties are delegable to medical assistants according to Kentucky law.” A copy of this letter is attached as Appendix C. Mr. Balasa’s opinion recognizes that Kentucky law does not specifically address what physicians are permitted to delegate to medical assistants. It also includes the following:

“Nevertheless, it is my legal opinion that common law principles inherent in state licensure authorize physicians to delegate a reasonable scope of administrative and clinical tasks (including entering verbatim into the computer provider order entry (CPOE) system the physician’s medication/prescription, laboratory, and diagnostic imaging orders; venipuncture/phlebotomy; measuring vital signs; collecting certain laboratory specimens; and intramuscular, intradermal, and subcutaneous injections – including immunizations/vaccinations) to knowledgeable and competent unlicensed professionals such as medical assistants working under their direct/onsite supervision in outpatients settings.”

Tasks which constitute the practice of medicine, or which state law permits only certain licensed health care professionals to perform, or which require the exercise of independent professional judgment, or the making of clinical assessments, evaluations, or interpretations, however may not be delegated to unlicensed professionals such as medical assistants.”

While conducting research on a similar topic in 2017, we reached out to Mr. Balasa to confirm whether his research revealed Kentucky law or guidance specific to medical assistants’ ability to respond to electronic prescription refill requests. He confirmed that he did not have any information more specific than the information contained in the attached letter. At that time, he also offered his opinion that he “would not be comfortable condoning a practice that would permit a medical assistant to submit a prescription/medication refill order to a pharmacy without the physician first reviewing and approving.”

Applying the existing KBML opinions to the specific use of medical assistants in the electronic prescription refill process, we conclude that a medical assistant could do the legwork in the Epic system to confirm a patient meets an established protocol (i.e. the initial clicks), but a physician (or other authorized prescriber) would need to approve and sign-off on the refill prior to the electronic prescription refill being transmitted. Mr. Balasa’s letter and informal feedback further support and confirm this conclusion. And, while not binding, Mr. Balasa’s letter is more recent than either of the two KBML opinions cited above and further reduces the chance that the KBML would depart from its previous guidance on the use of non-physician personnel to carry out physician-approved protocols.

Conclusion

In light of the KBML opinions addressed above, and considering that a medical assistant has no prescriptive authority and cannot perform tasks that require the exercise of independent professional judgement, we conclude as follows. In Kentucky, a medical assistant may not independently approve, or independently facilitate without subsequent provider approval/sign-off, an electronic prescription refill request based on a patient’s satisfaction of a physician-approved protocol. The medical assistant can confirm a patient meets the refill protocol, but an authorized prescriber must approve and sign-off on the refill request prior to its transmission to the pharmacy. I am available to discuss or answer additional questions at your convenience.