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2022 Webinar Schedule

January 10
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Weathering the Winter Surge

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Implementing AB 2789: E-Prescribing in California

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Why Is Electronic Prescribing So Important To Make a Law?

- Electronic prescribing can especially reduce opportunities for diversion of controlled substances
- Eliminating the use of paper forms, which can be lost, stolen and used illegally.
- E-prescribing also can help provide timely patient care.
- Software that can prescribe controlled substances costs more because of the additional regulatory compliance costs; the software must be certified that it complies with a 2010 DEA regulation that requires identity proofing of prescribers and two-factor authentication when signing prescriptions.



<https://mbc.ca.gov/Resources/Medical-Resources/e-prescriptions.aspx>

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History of AB 2789

- The electronic prescribing mandate was contained in a law passed by the California State Legislature in 2018.
- The bill (AB 2789) had a three-year delayed implementation to allow physicians and other prescribers the opportunity to select and implement an electronic prescribing platform. But the delay ends at the end of this year.
- The law is partially based on the Medicare electronic prescribing for controlled substances (EPCS) requirement, which is also set to take effect on January 1st.
- The Centers for Medicare and Medicaid Services (CMS) has proposed in the 2022 Medicare Physician Fee Schedule to delay implementation of the EPCS requirement for an additional year, to January 1, 2023, but that does not have any direct effect on the state requirement

(Note: the language for AB 2789 is very similar to CMS)

- Unlike the Medicare requirement, however, the California mandate applies to almost all prescriptions, not just those for controlled substances.



<https://www.cmadoocs.org/newsroom/news/view/ArticleId/49517/Are-you-ready-for-California-s-electronic-prescribing-mandate->

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ALL Prescribers are Expected to Comply !!!

- **All of the following are subject to the law, and there is no provision in the law for a practice to request an exemption.** Including the following prescriber situations:
- Physicians who request hardship exemptions,
- Considerations for retired (or semi-retired physicians),
- Low volume prescribers,
Physicians in safety net settings,
- Rural physicians.



<https://www.cmadoocs.org/newsroom/news/view/ArticleId/49517/Are-you-ready-for-California-s-electronic-prescribing-mandate-1>

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Written Law AB 2789 Wood – For Prescribers

- On and after January 1, 2022, a health care practitioner authorized to issue a prescription pursuant to Section 4040 shall have the capability to issue an electronic data transmission prescription, as defined under Section 4040, on behalf of a patient and to transmit that electronic data transmission prescription to a pharmacy selected by the patient.
- **For a prescription for a controlled substance, as defined by Section 4021, generation and transmission of the electronic data transmission prescription shall comply with Parts 1300, 1304, 1306, and 1311 of Title 21 of the Code of Federal Regulations, as amended from time to time.**



https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2789

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AB 2789 – Wood (Con't)

- (f) A health care practitioner who issues a prescription for a controlled substance but does not transmit the prescription as an electronic data transmission prescription shall document the reason in the patient's medical record as soon as practicable and within 72 hours of the end of the technological or electrical failure that prevented the electronic data transmission of the prescription.
- (j) A health care practitioner, pharmacist, or pharmacy who fails to meet the applicable requirements of this section shall be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board. This section does not create a private right of action against a health care practitioner. This section does not limit a health care practitioner's liability for the negligent failure to diagnose or treat a patient.
- (k) This section shall not apply to a health care practitioner, pharmacist, or pharmacy when providing health care services to an inmate, individual on parole, or youth under the jurisdiction of the Department of Corrections and Rehabilitation.



https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2789

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Exceptions AB 2789 (Subdivision (d) - Prescribers

(1) The prescription is issued pursuant to Section 11159.2 of the Health and Safety Code.

(2) An electronic data transmission prescription is not available due to a temporary technological or electrical failure. For purposes of this paragraph, "temporary technological or electrical failure" means failure of a computer system, application, or device, or the loss of electrical power to that system, application, or device, or any other service interruption affecting the certified electronic data transmission prescription application used to transmit the prescription.

(3) The prescribing health care practitioner is issuing a prescription to be dispensed by a pharmacy located outside California.

(4) (A) The prescription is issued in hospital emergency dept or urgent care clinic -one of following present:

(i) The patient resides outside California.

(ii) The patient resides outside the geographic area of hospital.

(iii) The patient is homeless or indigent, does not have a preferred pharmacy.

(iv) The prescription is issued at a time when a patient's regular or preferred pharmacy is likely to be closed.

- (B) Under any of the conditions described in subparagraph (A), a prescription shall be electronically issued but does not require electronic transmission and may be provided directly to the patient.
- (5) The prescription is issued by a veterinarian.
- (6) The prescription is for eyeglasses or contact lenses.
- (7) The prescribing health care practitioner and the dispenser are the same entity.
- (8) The prescription is issued by a prescribing health care practitioner under circumstances whereby the practitioner reasonably determines that it would be impractical for the patient to obtain substances prescribed by an electronic data transmission prescription in a timely manner, and the delay would adversely impact the patient's medical condition.
- (9) The prescription that is issued includes elements not covered by the latest version of the National Council for Prescription Drug Programs' SCRIPT standard, as amended from time to time.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2789

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AB 2789 Pharmacy / Pharmacists

- (b) On and after January 1, 2022, a pharmacy, pharmacist, or other practitioner authorized under California law to dispense or furnish a prescription pursuant to Section 4040 shall have the capability to receive an electronic data transmission prescription on behalf of a patient.
- (g) A pharmacy that receives an electronic data transmission prescription from a prescribing health care practitioner who has issued the prescription but has not dispensed the medication to the patient shall, at the request of the patient or a person authorized to make a request on behalf of the patient, immediately transfer or forward the electronic data transmission prescription to an alternative pharmacy designated by the requester.
- (h) If a pharmacy, or its staff, is aware that an attempted transmission of an electronic data transmission prescription failed, is incomplete, or is otherwise not appropriately received, the pharmacy shall immediately notify the prescribing health care practitioner.
- (i) A pharmacist who receives a written, oral, or faxed prescription shall not be required to verify that the prescription properly falls under one of the exceptions in subdivision (e). Pharmacists may continue to dispense medications from legally valid written, oral, or fax prescriptions pursuant to this division.



https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2789

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Interpretations of AB 2789

- The bill requires healthcare practitioners authorized to issue prescriptions to have the capability to transmit electronic data transmission prescriptions
- Requires pharmacies to have the capability to receive those transmissions.
- Requires those healthcare practitioners to issue prescriptions as an electronic data transmission prescription, unless specified exceptions are met.



<https://www.caphysicians.com/articles/what-you-need-know-about-california%E2%80%99s-new-prescribing-mandate>

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Interpretations of AB 2789

- **Does not** require the pharmacy to verify that a written, oral, or faxed prescription satisfy the specified exemptions.
- Pharmacies receiving the electronic data transmission prescription are required to immediately notify the prescriber if the electronic data transmission prescription fails, is incomplete, or is otherwise not appropriately received.
- The pharmacy is also required to transfer or forward the prescription to another pharmacy at the request of the patient, as specified.



<https://www.capphysicians.com/articles/what-you-need-know-about-california%E2%80%99s-new-prescribing-mandate>

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Enforcement of AB 2789 According to CMA

- Physicians who fail to comply with the law will be referred to the Medical Board of California.
- The Medical Board has published several physician communications outlining the requirements of the law but has not proposed any specific enforcement actions they might take.
- An enforcement action by the Medical Board under this law would be triggered by a complaint.
- The most likely scenario is that a physician is referred to the Medical Board by either a patient or a pharmacist.
- Importantly, the law does not create private right of action. That is, **physicians cannot be sued for failing to comply with the law.**



<https://www.cmadocs.org/newsroom/news/view/ArticleId/49517/Are-you-ready-for-California-s-electronic-prescribing-mandate-1>

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Implementation Tips for Prescribers

- For physicians who have an electronic health record (EHR) system, implementing electronic prescribing may be as simple as turning on an embedded electronic prescribing module.
 - Any EHR that is certified by the Office of the National Coordinator for Health IT (ONC) must have the capability to transmit prescriptions, including controlled substances, electronically.
 - **Physicians with an EHR should contact their vendor for more information.**
- For paper-based practices, selecting the right technology platform will be a little more complicated.
 - A stand-alone electronic prescribing system (that is, not tied to an EHR) will likely be much cheaper and easier to implement than a complete EHR system.
 - Consider whether the need to use the software on Android, IOS or other mobile platforms and whether they want enhanced software that provides additional features, such as the ability to check for drug interactions or a patient's drug allergies.



<https://www.cmadoocs.org/newsroom/news/view/ArticleId/49517/Are-you-ready-for-California-s-electronic-prescribing-mandate-1>
<https://mbc.ca.gov/Resources/Medical-Resources/e-prescriptions.aspx>

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Implementation Tips for Prescribers

- If the practice does any prescribing of controlled substances, the system must have the ability to do EPCS and query the CURES database.
 - Note: Not all commercially available systems can do both of these, so practices should ask vendors!!
- Practices should strongly consider electronic prescribing systems that are connected to the **SureScripts** network.
 - SureScripts is the largest electronic prescribing network in the country.
 - Vendors on their certified product list will give physicians and patients the largest number of pharmacies.



<https://www.cmadoocs.org/newsroom/news/view/ArticleId/49517/Are-you-ready-for-California-s-electronic-prescribing-mandate-1>
<https://mbc.ca.gov/Resources/Medical-Resources/e-prescriptions.aspx>

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FAQs?

On or after 01/01/2022, may a pharmacy dispense a prescription medication if it receives a prescription that is not transmitted to the pharmacy as an electronic data transmission prescription?

- BPC section 688(i) states that a pharmacist who receives a written, oral, or faxed prescription **is not required to verify** that the prescription properly falls under one of the exceptions in subdivision (e). Pharmacists may continue to dispense medications from legally valid written, oral, or faxed prescriptions pursuant to this division.

Reference: BPC [688\(i\)](#)



<https://www.pharmacy.ca.gov/licenses/erx-fans.shtml>

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FAQs?

Can an unfilled Schedule II-V controlled substance electronic data transmission prescription received by a pharmacy be transferred or forwarded to another pharmacy?

- BPC section 688(g) states a pharmacy that receives an electronic data transmission prescription from a prescribing health care practitioner who has issued the prescription but has not dispensed the medication to the patient **must, at the request of the patient or a person authorized to make a request on behalf of the patient, immediately transfer or forward the electronic data transmission prescription to an alternative pharmacy** designated by the requester.

Reference: BPC [688\(g\)](#)



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FAQs?

- If after speaking with the prescriber/agent a modification is made, would the electronic data transmission prescription be voided, and does the prescription need to be rewritten as a telephone prescription?
 - BPC section 688 does not address the modification of an electronic data transmission prescription. For a noncontrolled and Schedule III-V prescription, a pharmacy may reduce the oral prescription to writing as described in BPC section 4070(a) and HSC section 11164(b). Note: DEA registrants also must comply with federal law regarding controlled substances.

Reference: BPC [688](#), [4070\(a\)](#); HSC [11164\(b\)](#)



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FAQs?

- Does a pharmacist have a responsibility to report prescribers who are not complying with BPC section 688?
 - The law does not require pharmacists to notify the respective regulatory agency of issues of non-compliance, but they may choose to do so.

Reference: BPC [688\(j\)](#)



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FAQs??

- **How does BPC section 688 apply to out-of-state telemedicine doctors or telephonic/faxed prescriptions from out-of-state?**
 - BPC section 688(a) states a health care practitioner authorized to issue a prescription pursuant to section 4040 must have the capability to issue an electronic data transmission prescription, as defined under section 4040 on behalf of a patient and to transmit that electronic data transmission prescription to a pharmacy selected by the patient. Depending on the scenario, the pharmacy would not need to question a non-electronic data transmission prescription under BPC section 688(i). Note: The Board of Pharmacy recommends **practitioners contact their respective regulatory boards for guidance on their requirements for issuing a prescription.** Reference: BPC [688\(a\)](#), [688\(i\)](#)



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<https://www.pharmacy.ca.gov/licensees/erx-faqs.shtml>

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FAQs??

- **BPC section 688(e)(1) contains an exception to the law referencing California Health and Safety Code (HSC) section 11159.2, which discusses controlled substance prescriptions issued to terminally ill patients. Does HSC 11167.5 remain effective for those that practice in the applicable hospice and long-term care settings?** HSC section 11167.5 will remain effective in the applicable hospice and long-term care settings. Reference: HSC [11167.5](#), [11159.2](#); BPC [688\(e\)\(1\)](#)
- **Under BPC 688(e)(7), what does “same entity” mean? Same location or just same health care system?**
 - As described in BPC 688(e)(7), “same entity” refers to the same health care system which may or may not be the same physical location. Reference: BPC [688\(e\)\(7\)](#)



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FAQs??

- **Is posting a prescription in a health care provider's system accessible by pharmacists in their system considered transmission?**
 - Under BPC section 688(e)(7), **if the prescribing health care practitioner and dispenser are the same entity, electronic transmission prescriptions are not required.** Based on the Board's understanding of the scenario posed, **"posting" of the prescription in an electronic medical record for dispensing by a pharmacy of the same entity meets the intent of California law.** Controlled substance prescriptions must also comply with federal law. Reference: BPC [688\(a\)\(d\)\(e\)\(7\)](#)



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FAQs??

- **Does an e-mail qualify as "an electronic data transmission prescription," or does the prescription need to come from an electronic prescribing platform?**
 - BPC section 4040(c) describes an "electronic data transmission prescription" as any prescription order other than an electronic image prescription that is electronically transmitted from a licensed prescriber to a pharmacy. **An email could potentially qualify as an electronic data transmission prescription for noncontrolled substances; however, this does not appear to meet the spirit of the law.** However, under BPC section 688(c), a prescription for a controlled substance as defined by BPC section 4021, the electronic data transmission prescription must comply with Parts 1300, 1304, 1306, and 1311 of Title 21 of the Code of Federal Regulations (CFR). Note: The Board of Pharmacy recommends practitioners contact their respective regulatory boards for guidance on their requirements for issuing a prescription. Reference: BPC [4040\(c\)](#), [4021](#), [688\(c\)](#); [CFR 1300](#), [1304](#), [1306](#), [1311](#)



<https://www.pharmacy.ca.gov/licenses/erx-faqs.shtml>

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In Summary

- This new law is meant to incentivize prescribers embrace the emerging technology by way of electronic prescribing.
- From the prescriber's standpoint, they must simply prescribe every class of prescription medications via electronic prescribing – even controlled substances.
- The only exception to this new requirement is for prescribers whose patients are inpatient. For every other non-inpatient settings, prescribers must submit prescription orders via e-prescribing.
- From the pharmacy's standpoint, nothing really changes.
- Note: There are many loopholes to this new law – hire an attorney to dive into the details if needed!



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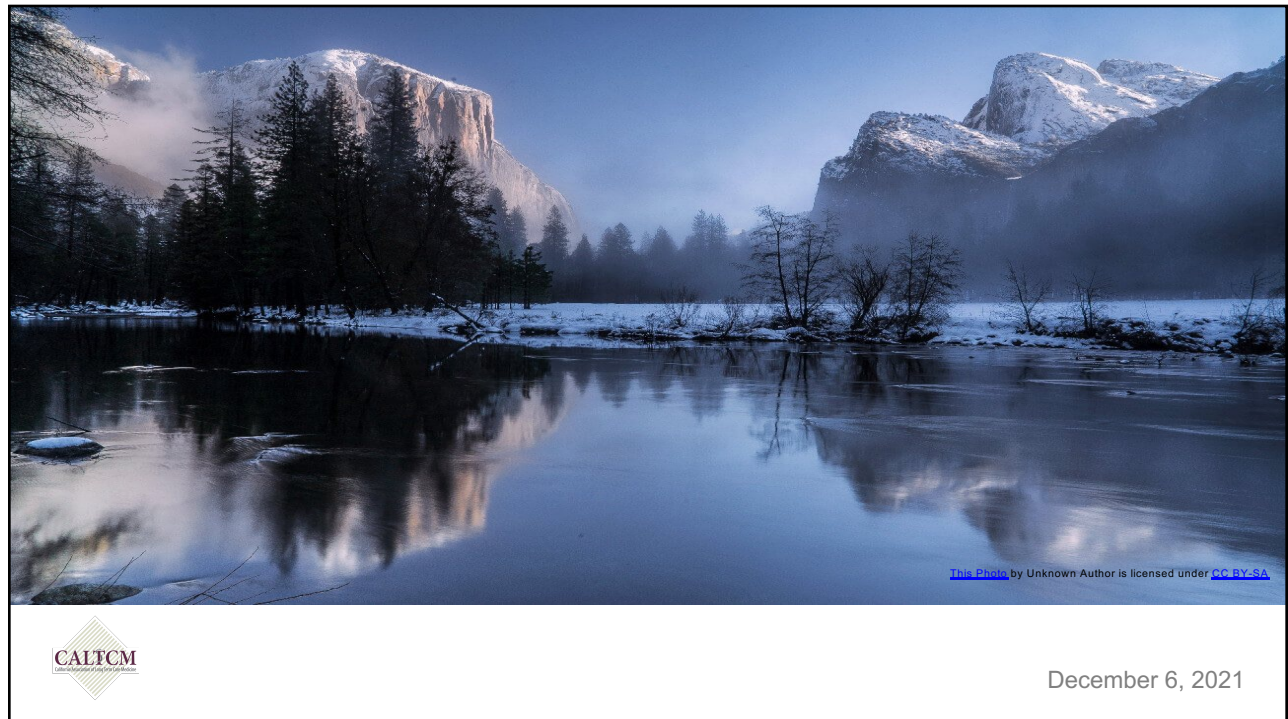


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