

California's New Electronic Prescription Law – AB 852

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By Michael H. Cohen

More and more states like California are requiring that doctors and any other health providers who have the authority to prescribe medications should prescribe medications electronically. California recently passed a law, [Assembly Bill \(AB\) 2789](#), that requires that all prescriptions, effective January 1, 2022, issued by a licensed healthcare provider be submitted electronically. Healthcare providers who fail to comply with the new law may be subject to disciplinary action.

According to the [California Hospital Association](#), there are some exceptions. A few exceptions include:

- The technology or electrical failures prevent the prescription order from being sent.
- The prescription is dispensed from a non-California pharmacy.
- The prescription is “issued to a patient who has a terminal illness “pursuant to [Section 11159.2](#) of the Health and Safety Code.

Other exceptions to the electronic transmission requirement listed in the [AB 852 statute](#) include:

- Prescriptions issued pursuant to Section 11159.2 of the Health and Safety Code.
- A hospital emergency department or urgent care center issues the prescription and at least one of the following conditions apply:
 - The patient resides outside of California or outside the hospital's geographic area.
 - The patient is homeless, indigent, and doesn't have a preferred pharmacy.
 - The prescription is issued “at a time when a patient's regular or preferred pharmacy is likely to be closed.”
- A veterinarian is the prescriber.
- The prescription is for eyeglasses or contact lenses.
- “The prescribing health care practitioner and the dispenser are the same entity.”
- Other statutory conditions

AB 852 provides that additional exceptions to the electronic data transmission prescription requirement may apply for prescribers who are registered with the California State Board of Pharmacy and who state that the prescriber meets the exception criteria – for example, that the prescriber issues 100 or fewer prescriptions each calendar year.

AB 852 also provides “specified exceptions to the requirement for a pharmacy to immediately transfer an electronic prescription to an alternative pharmacy upon request of the patient, including if the action would result in a violation of any state or federal law.”

The full list of exemptions is located at [Section 688 of the California Business and Professions Code](#).

The Board of Registered Nursing, according to the [California Hospital Association](#), is recommending that licensed prescribers also have paper prescription forms “that meet the requirements of [AB 149](#) should a technological or electrical failure prevent a prescription from being issued electronically.” The [California state attorney general’s website](#) has a list of approved security prescription printers.

AB 852 – California Assembly (2021-2022)

AB 852 states that prior to the January 1, 2022 effective date of the law, existing law:

“Provides for the regulation of health care practitioners and requires prescription drugs to be ordered and dispensed in accordance with the Pharmacy Law. The Pharmacy Law provides that a prescription is an oral, written, or electronic data transmission order and requires electronic data transmission prescriptions to be transmitted and processed in accordance with specified requirements.”

AB 852 requirements:

AB 852 now:

Requires that healthcare practitioners who are authorized to issue prescriptions – should have the capability to issue electronic data transmission prescriptions. Pharmacies, pharmacists, or other practitioners authorized to dispense medications should have the capability to receive electronic data transmission prescriptions.

AB 852 also requires that:

- The pharmacy promptly notify the prescriber if the prescription order failed or there was a problem with the prescription order.
- Healthcare providers who issue “a prescription for a controlled substance” but don’t “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.”
- Patients or people authorized on behalf of the patient may request that a pharmacy that has received an electronic data transmission prescription (from a healthcare provider who has not yet dispensed the medication to the patient) immediately send that electronic prescription to a different pharmacy requested by the patient or an authorized person on the patient’s behalf.

As discussed, if the pharmacy (or staff) is aware that the electronic prescription transmission failed or is incomplete the pharmacy must promptly notify the prescriber of the failure/incomplete transmission.

AB 852 does not “require the pharmacy verify that a written, oral, or faxed prescription satisfies the specified exemptions.” The law exempts healthcare providers, pharmacists, and pharmacies who provide healthcare to specified individuals – who are under the Department of Corrections and Rehabilitation’s jurisdiction.

Other exceptions and conditions may apply that skilled California healthcare lawyers can explain.

Additional B 852 regulations

AB 852, [according to OpenStates](#), would:

“prohibit a pharmacy, pharmacist, or other practitioner authorized to dispense or furnish a prescription from refusing to dispense or furnish an electronic prescription solely because the prescription was not submitted via, or is not compatible with, their proprietary software.”

AB 852 would:

“Authorize a pharmacy, pharmacist, or other authorized practitioner to decline to dispense or furnish an electronic prescription submitted via software that fails to meet any one of specified criteria, including compliance with the federal Health Insurance Portability and Accountability Act of 1996.”

Failure to comply with AB 852

Healthcare providers, pharmacists, and pharmacies that fail to comply with AB 852 will be “referred to the appropriate state professional licensing board solely for administrative sanctions, as provided.”

E-prescribing and CMS

The [Centers for Medicare and Medicaid Services](#) defines E-prescribing as electronic prescriptions that are “accurate, error-free, and understandable” to a pharmacy. CMS supports electronic prescriptions because they help reduce medication errors. CMS requires Part D sponsors, prescribers, and dispensers to support electronic prescribing consistent with regulations at [42 CFR § 423.160](#).

E-prescribing outside of California

[States outside of California](#) have their own e-prescription laws. For example:

“Nevada Assembly Bill 310 mandates that all controlled-substance prescriptions be electronically prescribed. The bill outlines additional regulations for controlled substance prescriptions including penalties for prescribers. See [Nevada E-Prescribing](#) for further details.”

New York “was the first state to mandate e-Prescribing and put penalties in place for non-compliance. The Internet System for Tracking Over-Prescribing, or I-STOP, mandate was passed in 2012 and requires prescribers to electronically prescribe both non-controlled and controlled.”

E-prescribing and HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law. HIPAA creates standards for protecting sensitive health information from disclosure without the consent or knowledge of the patient.

According to the [US Centers for Disease Control and Prevention](#) (CDC), HIPAA applies to “every healthcare provider, regardless of size of practice, who electronically transmits health information in connection with certain transactions.” HIPAA also applies to healthcare plans and other healthcare entities. Generally, the transmission of electronic prescriptions is required by HIPAA – which means that the patient needs to consent to the electronic transmission and the sender and receiver need to comply with HIPAA security rules to protect the patient’s health information.

The transmission of electronic prescriptions may involve other federal and state privacy and protection laws that our skilled

healthcare lawyers can explain.

According to HIPAA Journal, healthcare providers and pharmacies need to review HIPAA's administrative rules, privacy rule, security rule, and breach notification rule. There are also "best practices" for pharmacies. There are penalties for pharmacies that fail to comply with HIPAA.

In addition to compliance with AB 852, CMS rules, and HIPAA, healthcare providers and pharmacies that send and receive electronic prescriptions need to understand the US Department of Justice rules for the electronic prescription of controlled substances. Prescriptions based on telemedicine may raise other legal issues including telemedicine issues and FDA compliance issues.

Healthcare providers and pharmacies in California need to understand the new compliance requirements for sending and receiving electronic prescriptions. Failure to comply with the new California Law, AB 852, and other electronic prescription laws such as HIPAA can result in severe disciplinary actions.

FAQs About HIPAA and the Right of Access, Part one

The US Department of Health and Human Services provides questions and answers to the HIPAA Privacy Rule's Right of Access. These FAQs directly affect healthcare practices.

FAQs About HIPAA and the Right of Access Part two

The US Department of Health and Human Services provides questions and answers to the HIPAA Privacy Rule's Right of Access. These FAQs directly affect healthcare practices

Doctors and pharmacies should contact Cohen Healthcare Law Group, PC to discuss California's new electronic prescription law – AB 852. Our experienced healthcare attorneys advise any healthcare provider with the authority to prescribe or dispense medication about healthcare compliance laws and regulations.

Contact our healthcare law and FDA attorneys for legal advice relevant to your healthcare venture.