



California State Board of Pharmacy
2720 Gateway Oaks Drive, Ste 100
Sacramento, CA 95833
Phone: (916) 518-3100 Fax: (916) 574-8618
www.pharmacy.ca.gov

Business, Consumer Services and Housing Agency
Department of Consumer Affairs
Gavin Newsom, Governor



To: Board Members

Subject: Agenda Item V. Discussion and Consideration of Application and Enforcement of Business and Professions Code Section 688 Related to Forwarding of Controlled Substance Prescriptions, including Potential Statutory Amendments

Relevant Law

[Business and Professions Code section 688](#) establishes mandatory requirements for the electronic data transmission prescription under specified conditions effective January 1, 2022.

Background

As part of its discussion and education of the upcoming requirements, the Board developed [frequently asked questions](#) (FAQs) to educate licensees about the law. As part of its discussion, and as included in the FAQs, stakeholders and members have expressed concerns with provisions contained in the statute establishing requirements for a pharmacy to forward or transfer a controlled substance to another pharmacy if requested by the patient. The Board's current FAQ provide the following:

5. 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\(g\)](#)

The Board of Pharmacy would strongly encourage licensees to contact their local DEA office for confirmation of DEA's policy and the federal requirements related to the forwarding of an unfilled controlled substances prescription.

Subsequent to release of the FAQs, as part of the October Enforcement and Compounding Meeting, members received a request for additional discussion on this specific issue as it remains unclear if both NCPDP standards are in place to

allow for the forward or transfer of a controlled substance prescription. The Committee agreed to agendize the issue at the Board's December 2021 meeting.

For Member Consideration

As the Board considers this issue, in anticipation of possible resolution of these potential barriers to compliance with the provisions of BPC 688, staff have prepared draft statutory amendments that could address the issue.

Should members agree a statutory change is appropriate, it may be appropriate to take formal action to pursue the change through the legislative process. Staff notes that should the Board be successful in securing such amendments, the changes would become effective January 1, 2023.

Following this memo is the draft statutory proposal.

**Draft Statutory
Proposal
BPC § 688**

ARTICLE 7.5. Health Care Practitioners [680 - 688]

(Article 7.5 added by Stats. 1998, Ch. 1013, Sec. 1.)

Proposal to amend Business and Professions Code Section 688 as follows:

(a) 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.

(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.

(c) 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.

(d) On and after January 1, 2022, a prescription prescribed by a health care practitioner shall be issued as an electronic data transmission prescription. This subdivision shall not apply to prescriptions issued pursuant to subdivision (e).

(e) Subdivision (d) shall not apply to any of the following:

(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 a hospital emergency department or urgent care clinic and one or more of the following conditions are present:

(i) The patient resides outside California.

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

(iii) The patient is homeless or indigent and 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.

(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.

(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, unless either of the following conditions apply.

(1) The action would result in a violation of other state or federal law.

(2) the action is not supported by the latest version of the National Council for Prescription Drug Programs' SCRIPT standard, as amended from time to time.

(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.

(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.

(Added by Stats. 2018, Ch. 438, Sec. 1. (AB 2789) Effective January 1, 2019.)