



What Florida's new e-prescribing law means for you

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At the behest of the Florida Retail Federation and big chain pharmacies, state Rep. Amber Mariano introduced HB 831 during the 2019 Legislative Session. As originally filed, this bill would have prohibited paper prescriptions and required physicians to electronically transmit all prescriptions for all medications in all situations.

The Senate companion, SB 1192 filed by Sen. Aaron Bean, initially mirrored the version filed by Rep. Mariano. The FMA, FOMA and state specialty societies met with both sponsors to explain the problems with mandatory electronic prescribing and requested numerous changes to the legislation.

While Rep. Mariano refused to make any changes to her bill, Sen. Bean agreed to several amendments to HB 831 after it passed the House. The end product, while still problematic, was a major improvement over the original bill.

Gov. Ron DeSantis signed HB 831 into law on Tuesday, June 18.

Full Summary of HB 831

HB 831 applies to any healthcare practitioner who is licensed by law to prescribe a medicinal drug and sets forth the following general rule for prescribing:

If you are licensed to prescribe a medicinal drug, and you:

- (1) **Maintain a system of electronic health records; or**
- (2) **Are an owner, employee or contractor of a licensed healthcare facility or practice that maintains a system of electronic health records and are prescribing in your capacity as an owner, employee or contractor of the licensed healthcare facility;**

then you must electronically transmit your prescriptions, unless an exception applies.

The exceptions are as follows:

- (a) The prescriber and the dispenser are the same entity.
- (b) The prescription cannot be transmitted electronically un-

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der the most recently implemented version of the National Council for Prescription Drug Programs SCRIPT standard.

- (c) The prescriber has been issued a waiver by the Department of Health (if you can demonstrate economic hardship, technological limitations outside of your control, or another exceptional circumstance, you can get a waiver from DOH for no more than 1 year).
- (d) The prescriber reasonably determines that it would be impractical for the patient in question to obtain a medicinal drug via an electronic prescription and such delay would adversely impact the patient's health.
- (e) The prescriber is prescribing a drug under a research protocol.
- (f) The prescription is for a drug for which the FDA requires the prescription to contain elements that may not be included in electronic prescribing.
- (g) The prescription is issued to a hospice patient or a nursing home resident.
- (h) The prescriber, or the patient, determines that it is in the patient's best interest to compare prescription drug prices among area pharmacies (this must be documented in the medical record).

Based on this language, if you are a physician who does not "maintain" an EHR, or work for a licensed healthcare facility or practice that does, you will not have to electronically prescribe when this mandate becomes effective. If you do maintain an EHR, then arguably you will have to prescribe electronically, unless an exception applies, even if you are prescribing for a patient for whom you do not have an EHR (for example, if you are providing free care at a health fair – in which case exception (d) may well apply). **FMA members who have any questions about this requirement can contact the FMA Legal Department at legal@FLmedical.org.**

This bill tasks the Board of Pharmacy, in consultation with the other state boards governing professionals who can prescribe medicinal drugs, with developing rules to implement HB 831. The FMA will work to ensure that these rules do not unduly burden Florida physicians.

When does this electronic prescribing mandate take effect?

It is important to note that federal law already requires that on or after January 1, 2021, every prescription for a covered Part D Schedule II, III, IV or V controlled substance must be transmitted electronically (subject to certain exceptions similar to the ones above)ⁱ. The FMA argued that HB 831 was unnecessary given the federal requirement, but that if the state insisted on expanding on federal law, the effective dates should be the same.

The Florida Legislature, an entity that is not predisposed to making things easy, ignored this request and instead provided that HB 831, if signed by the Governor, shall take effect on January 1, 2020. However, the bill's mandate to electronically prescribe does not apply to prescribers until the renewal of their licenses or by July 1, 2021, whichever is earlier.

For osteopathic physicians, this means that the electronic prescribing mandate will apply to them by March 31, 2020, the last day to renew their licenses after the effective date of this bill.

For allopathic physicians, the situation is more complicated. Licensure renewal is split into two groups: The deadline for the even-numbered year group is January 31, 2020. The deadline for the odd-numbered year group is January 31, 2021. For the odd-numbered year group, the electronic prescribing mandate will be effective by January 31, 2021 at the latest.

For the even-numbered year group, the effective date of the mandate will depend on when exactly the physician renews his or her license. Generally, a physician can renew up to 90 days prior to the deadline. Thus, if an MD renews his or her license prior to January 1, 2020, the electronic prescribing mandate would not apply until July 1, 2021. If the MD renews his or her license on or after January 1, 2020, the mandate to electronically prescribe would be effective on the date of renewal.

This calculation is based on a plain reading of the bill. If any of the boards reach a different interpretation of when the mandate is effective, the FMA will advise our members immediately and, depending on the interpretation, may take legal action.

i. Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act; P.L. 115-271)