

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1192

INTRODUCER: Senator Bean

SUBJECT: Electronic Prescribing

DATE: April 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Pre-meeting
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1192 requires all health care practitioners licensed to prescribe medicinal drugs¹ to do so only electronically by the time of their license renewal or July 1, 2021, whichever is earlier. The bill repeals provisions related to written prescriptions and makes conforming changes.

The bill has an effective date of January 1, 2020.

II. Present Situation:

In 2007, the Legislature created s. 408.0611, F.S., to promote the implementation of e-prescribing by health care practitioners, health care facilities, and pharmacies in order to prevent prescription drug abuse, improve patient safety, and reduce unnecessary prescriptions. To that end, the Legislature created a clearinghouse in the Agency for Health Care Administration (ACHA) to provide information on e-prescribing to:

- Convey the process and advantages of e-prescribing;
- Provide information regarding the availability of e-prescribing products, including no-cost or low-cost products; and
- Regularly convene stakeholders to assess and accelerate the implementation of e-prescribing.²

Section 408.0611 (2)(a), F.S. defines “electronic prescribing” as, at a minimum, the electronic review of the patient’s medication history, the electronic generation of the patient’s prescription, and the electronic transmission of the patient’s prescription to a pharmacy.

¹ A medicinal drug is any medicine that treats, prevents, or alleviates symptoms of injury, illness, or disease. See The Free Dictionary by Farlex, *Medicinal Drug*, available at <https://www.thefreedictionary.com/medicinal+drug> (last visited Apr. 3, 2019).

² Section 408.0611, F.S.

The AHCA is required to work in collaboration with private sector e-prescribing initiatives and relevant stakeholders to create and maintain the clearinghouse. These stakeholders must include organizations that:

- Represent health care practitioners;
- Represent health care facilities;
- Represent pharmacies;
- Operate e-prescribing networks;
- Create e-prescribing products; and
- Represent regional health information organization.³

Specifically, the AHCA was tasked to provide on its website:

- Information regarding the advantages of e-prescribing, including using medication history data to prevent drug interactions, prevent allergic reactions, and deter doctor-shopping and pharmacy-shopping for controlled substances;
- Links to federal and private sector websites that provide guidance on selecting an appropriate e-prescribing product; and
- Links to state, federal, and private sector incentive programs for the implementation of e-prescribing.⁴

The AHCA annually reports to the Governor and Legislature on the implementation of e-prescribing by health care practitioners, facilities, and pharmacies.⁵ The AHCA reports that as of the end of September 2018, the average number of e-prescribers is 50,200 and that almost 10 million e-prescriptions are transmitted each month.⁶ Florida's e-prescribing rate has steadily increased since 2007 with an estimated 75.7 percent of all prescriptions being e-prescribed.⁷ However, Florida prescribers have been slower to adopt e-prescribing for controlled substances.⁸ In 2017, only 7.8 percent of controlled substance prescriptions were e-prescribed.⁹

Section 456.42, F.S., requires that prescriptions that are electronically generated and transmitted contain the following:

- The name of the prescriber;
- The name and strength of the drug prescribed;
- The quantity of the drug prescribed in numerical format;
- Directions for use; and
- The date of the prescription and electronic signature of the prescriber.

³ Section 408.0611(3), F.S.

⁴ Section 408.0611, (3)(a), F.S.

⁵ Agency for Health Care Administration, Florida Center for Health Information and Transparency, *Florida's Annual Electronic Prescribing Report for 2018* (Jan. 2019), available at <http://www.fhin.net/eprescribing/fleprescribingRpts.shtml> (last visited Apr. 3, 2019).

⁶ *Supra* note 5.

⁷ *Id.* E-prescribing rate is defined as the amount of e-prescribing relative to all prescriptions that could have been e-prescribed.

⁸ Agency for Health Care Administration, Florida Center for Health Information and Transparency, *2018 Florida Electronic Prescribing Quarterly Summary*, available at <http://www.fhin.net/eprescribing/dashboard/docs/2018eprescribmetrics.pdf> (last visited Apr. 3, 2019).

⁹ *Id.*

E-prescribing software may not interfere with a patient's choice of pharmacy or use any means, such as pop-up ads, advertising, or instant messaging to influence or attempt to influence the prescribing decision of the prescriber at the point of care. E-prescribing software may provide formulary information, as long as nothing makes it more difficult or precludes a prescriber from selecting a specific pharmacy or drug.

E-prescribing is done by health care practitioners through the use of electronic devices such as a computer, tablets, or phones that are equipped with software to securely enter and transmit prescriptions to pharmacies also using special software and connectivity to a transmission network.¹⁰

E-Prescribing Software and System Design Issues

Practitioners and researchers have identified several issues related to the software and system design used for e-prescribing. Some software or system designs may lack appropriate alerts. Others may not have alerts configured in a meaningful way so that a prescriber receives an overload of alerts.¹¹ Other issues are related to the interface or screen design of the software. In such cases, errors may occur in the use of drop-down boxes and automatic fill functions which may lead to more manual entry and editing or prescriptions.¹² Additionally, these systems may be configured to bundle prescriptions or to transmit at a time other than the time of entry.¹³ For example, the system may allow users to input prescriptions over the course of a specified duration and then send all entered prescriptions at a designated time or interval.¹⁴

The Cost of E-Prescribing

The cost of an e-prescribing system used by prescribers is based on the number of prescribers using the system and the options included in the system. It is estimated that the cost of an electronic health record system for an office with 10 full-time prescribers is approximately \$42,332 for implementation and \$14,725 for annual maintenance.¹⁵

Medicare E-Prescribing

In 2018, Congress mandated e-prescribing for controlled substances under the Medicare Part D program by January 1, 2021, as a part of a comprehensive bill to address the opioid crisis.¹⁶

Prior to 2010, a major obstacle to e-prescribing was a prohibition by the U.S. Drug Enforcement Administration (DEA) on e-prescribing of controlled substances. However, in 2010, the DEA

¹⁰ The Office of the National Coordinator for Health Information Technology, *What is Electronic Prescribing?* available at <https://www.healthit.gov/faq/what-electronic-prescribing> (last visited Apr. 3, 2019).

¹¹ Section 408.0611, (3)(a), F.S.

¹² *Supra* note 10.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 408.0611, (3)(a), F.S.

¹⁶ Substance Use-Disorder Prevention that Promotes Opioid Recovery Treatment (SUPPORT) for Patients and Communities Act, Pub. Law No. 115-271 s. 2003 (2018). *See also* U.S. House of Representatives, Energy and Commerce Committee, *HR 6: SUPPORT for Patients and Communities Act*, available at <https://www.congress.gov/bill/115th-congress/house-bill/6/text#toc-H7820B15EE005461C9DA95E7E747412DD> (last visited Apr. 3, 2019).

adopted a rule that allowed providers to write electronic prescriptions for controlled substances and permitted pharmacies to receive, dispense, and archive these electronic prescriptions.¹⁷ To e-prescribe controlled substances, a health care practitioner must:

- Purchase or use DEA-compliant software that supports e-prescribing;
- Complete the identity-proofing process to acquire a two-factor authentication credential or digital certificate;
- Attach the authentication credential to his or her identity;
- Set access controls so that only individuals who may legally prescribe a controlled substance are allowed to do so; and
- Access the e-prescribing or electronic health record platform.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 456.42, F.S., to eliminate written prescriptions for medicinal drugs and the use of the prescription pad. The bill requires all prescribers to generate and transmit all medicinal prescriptions electronically upon renewal of the health care practitioner's license or by July 1, 2021, whichever is earlier.

The bill repeals ss. 831.311 and 893.065, F.S., which become obsolete with the elimination of written prescriptions for controlled substances. The bill also repeals s. 456.43, F.S., because the bill moves the provisions of that section to s. 456.42, F.S.

This bill amends s. 409.91196, F.S., to conform a cross reference, and makes other conforming changes to ss. 409.912, 456.0392, 458.3265, 458.331, 458.347, 459.0137, 459.015, and 459.022, F.S., to remove references to written prescriptions and the counterfeit-proofing of prescription pads.

The bill provides an effective date of January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ U.S. Department of Justice, Drug Enforcement Administration, Diversion Control Division, *Electronic Prescriptions for Controlled Substance (EPCS)*, available at https://www.deadiversion.usdoj.gov/e-comm/e_rx/ (last visited Apr. 3, 2019).

¹⁸ *Id.* See also, DrFirst, *EPCS: Getting Started with Electronic Prescribing of Controlled Substances*, available at http://www.drfirst.com/wp-content/uploads/EPCS_Infographic_from_DrFirst-1.png (last visited Apr. 3, 2019).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1192 may have a significant negative fiscal impact on healthcare practitioners licensed to prescribe medicinal drugs who do not currently have access to e-prescribing hardware or software. Pharmacies currently accepting e-prescriptions may experience a financial savings due to the efficiencies of e-prescribing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.42, 409.91196, 409.912, 456.0392, 458.3265, 458.331, 458.347, 459.0137, 459.015, and 459.022.

This bill repeals the following sections of the Florida Statutes: 456.43, 831.311, and 893.065.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
