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 Appropriations Committee on Health and Human Services

BILL:	SB 1568
INTRODUCER:	Senator Brodeur
SUBJECT:	Electronic Prescribing
DATE:	April 9, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Favorable**
2.	Gerbrandt	McKnight	AHS	**Pre-meeting**
3.			RC	

I. Summary:

SB 1568 revises exceptions to Florida's electronic prescribing (e-prescribing) requirement. Authorized prescribers who prescribe a medicinal drug in their capacity as an owner, employee, or contractor of a health care facility or practice that maintains an electronic health records system must electronically transmit prescriptions instead of issuing written prescriptions, unless they meet an exception.

The bill lists exceptions for prescribers who:

- Prescribe fewer than 100 prescriptions annually.
- Are located in an area where a state of emergency has been declared.
- Have been issued a waiver by the Department of Health due to circumstances beyond their control.

The bill removes seven exceptions from current law. Prescribers who no longer qualify for an exception would be required to establish compliance with the e-prescribing requirement upon their next scheduled license renewal or by July 1, 2026, whichever occurs first.

The bill purports to align Florida's exceptions to e-prescribing requirements for *all* prescription drugs with federal exceptions that apply only to controlled substances under Medicare Part D. [1] However, federal law includes additional provisions, such as a compliance threshold of 70 percent, which the federal Centers for Medicare & Medicaid Services (CMS) is expected to review and revise.[2]

[1] Medicare Part D is the voluntary federal prescription drug benefit for seniors and individuals with disabilities.

[2] If a prescriber issues 70% or more of their Part D controlled substance prescriptions electronically, they are considered in compliance with the federal Electronic Prescribing of Controlled Substances (EPCS) requirement. CMS has not yet finalized a move to raise the threshold beyond 70 percent, but the language used in Federal Register notices and CMS guidance suggests that eventual increases are likely.

A prescriber prescribing in a personal capacity and not as an owner, employee, or contractor of a facility or practice that maintains an electronic health records system remains exempt from e-prescribing requirements under the bill.

The bill has an insignificant, negative fiscal impact on state expenditures that can be absorbed within existing resources. **See Section V., Fiscal Impact Statement.**

The bill takes effect July 1, 2025.

II. Present Situation:

E-prescribing

E-prescribing refers to the transmission of prescription information in electronic format from a prescriber at the point of care to a pharmacy. It is widely adopted as a method to improve the accuracy and legibility of prescriptions, reduce medication errors associated with handwritten or phoned-in orders, prevent prescription fraud and forgery, and streamline the medication dispensing process. In provider settings, e-prescribing integrates with electronic health records (EHRs), allowing prescribers to view patient medication histories, check for drug interactions, and access formulary information in real time. On the pharmacy side, electronic receipt of prescriptions reduces transcription errors, accelerates processing time, and facilitates more accurate patient counseling and verification procedures. The number of e-prescribers in Florida continues to increase annually.[3]

Federal Medicare E-Prescribing Requirements

The federal *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act* (SUPPORT Act), enacted in 2018, mandated that prescriptions for controlled substances covered under Medicare Part D be transmitted electronically beginning January 1, 2021.[4] Federal CMS is responsible for enforcing this mandate and has established the Electronic Prescribing for Controlled Substances (EPCS) Program to oversee compliance.[5]

The Secretary of the U.S. Department of Health and Human Services *may* waive the requirements for a Medicare Part D covered schedule II, III, IV, and V controlled substance to be electronically transmitted in the case of a prescription issued:

- When the practitioner and dispensing pharmacy are the same entity;
- That cannot be transmitted electronically under the most recently implemented version of the National Council for Prescription Drug Programs' Stanford Computerized Researcher Information Profile Technique (SCRIPT) Standard;

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[3] *Agency for Health Care Administration, 2023 Electronic Prescribing Annual Report* (Jan. 2024); *available at* https://ahca.myflorida.com/content/download/25388/file/2023eRxAnnualReport_Final.pdf (last visited Mar. 23, 2025).
[4] *Substance Use–Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act,* Pub. L. No. 115-271, 132 Stat. 3894 (2018); *available at* https://www.congress.gov/115/plaws/publ271/PLAW-115publ271.pdf (last visited Mar. 23, 2025).
[5] *Centers for Medicare & Medicaid Services, Electronic Prescribing for Controlled Substances (EPCS) Program, available at* https://www.cms.gov/medicare/e-health/eprescribing/cms-eprescribing-for-controlled-substances-program (last visited Mar. 23, 2025).

- By a practitioner who received a waiver or a renewal for a period of time, not to exceed one year, from the requirement to use electronic prescribing due to economic hardship, technological limitations outside the control of the practitioner, or other exceptional circumstances;
- By a practitioner under circumstances in which it would be impractical for the individual to obtain the substances prescribed by electronic prescription in a timely manner, and such delay would adversely impact the individual's medical condition;
- By a practitioner prescribing a drug under a research protocol;
- By a practitioner for a drug for which the Food and Drug Administration (FDA) requires a prescription to contain elements that are not able to be included in e-prescribing, such as a drug with risk evaluation and mitigation strategies that include elements to assure safe use;
- By a practitioner for an individual receiving hospice care that is not covered under the hospice Medicare benefit or a resident of a nursing facility dually eligible for Medicaid and Medicare.[6]

The Secretary has authority to revise these exceptions and generally does so annually through the Medicare physician fee schedules.[7]

Additionally, federal CMS established a 70 percent compliance threshold by rule. To be considered compliant, prescribers must electronically transmit at least 70 percent of their Schedule II through V controlled substance prescriptions under Medicare Part D during each measurement year.[8]

Florida E-Prescribing Requirements

Florida law generally requires prescriptions for *all* medicinal drugs, not just controlled substances, to be electronically transmitted, subject to specific exceptions. Section 456.42, F.S., governs written and electronic prescriptions for medicinal drugs. Under current law, a health care practitioner who is licensed to prescribe medicinal drugs and who maintains an electronic health record system or who is prescribing medicinal drugs in his or her capacity as an owner, an employee, or a contractor of a licensed health care facility or practice that maintains such a system, must electronically transmit prescriptions. This requirement also applies to practitioners prescribing on behalf of a licensed facility or practice that maintains such a system.

However, several exceptions exist in Florida law that allow prescribers to write paper prescriptions. For example, the requirement for e-prescribing does not apply if the practitioner issues fewer than 100 prescriptions annually, is located in an area under a declared state of emergency, or determines it is in the best interest of the patient to compare prescription drug prices among area pharmacies. Additional exceptions include prescribing under research protocols, for patients in hospice or nursing home care, or when a prescription cannot be electronically transmitted under the current SCRIPT standard. These exceptions are not

[6] *42 U.S.C. § 1395w–104(e)(7)(B); available at* https://www.govinfo.gov/app/details/USCODE-2021-title42/USCODE-2021-title42-chap7-subchapXVIII-partD-subpart1-sec1395w-104 (last visited Mar. 23, 2025).
[7] *See* "Effect of Proposed Changes" to compare Florida's exceptions for all prescription drugs with the EPCS exceptions.
[8] *42 C.F.R. § 423.160(a)(5)(i); available at* https://www.ecfr.gov/current/title-42/section-423.160 (last visited Mar. 23, 2025).

uniformly defined in federal laws mandating the e-prescribing of controlled substances, and some have been eliminated at the federal level.

Section 456.43, F.S., authorizes the Department of Health (DOH) to issue waivers from the electronic prescribing requirement for up to one year, based on demonstrated economic hardship, technological limitations, or other exceptional circumstances. It also authorizes the DOH to adopt rules and coordinate with professional boards to implement and enforce the e-prescribing requirements. Electronic prescribing may not interfere with a patient's freedom to choose a pharmacy.[9]

III. Effect of Proposed Changes:

Section 1 amends s. 456.42, F.S., to require health care practitioners who are licensed by law to prescribe a medicinal drug and who are prescribing medicinal drugs in their capacity as an owner, an employee, or a contractor of a licensed health care facility or practice that maintains a system of electronic health records[10] to electronically transmit prescriptions for such drugs. The bill creates two exceptions, retains one in current law, and removes seven, as follows.

The bill creates the following two exceptions:

- *(a) The practitioner prescribes fewer than 100 such prescriptions annually;*
  This is intended to mirror the "Small Prescriber Exception" from Electronic Prescribing for Controlled Substances (EPCS) requirements which federal Centers for Medicare and Medicaid Services (CMS) automatically provides to prescribers who issue 100 or fewer qualifying Medicare Part D controlled substance prescriptions in the measurement year.[11]

- *(b) The practitioner is located in an area for which a state of emergency is declared pursuant to s. 252.36, F.S.;*
  This is intended to mirror the "Declared Disaster Exception" from EPCS requirements which CMS automatically provides to prescribers located in the geographic area of an emergency or disaster declared by a federal, state, or local government entity.[12]

The bill retains the following exception in current law:

- *(c) The practitioner has been issued a waiver by the department, not to exceed one year in duration, from the requirement to use electronic prescribing due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the practitioner, or another exceptional circumstance demonstrated by the practitioner;*
  This is similar to the "CMS-Approved Waiver" exception. Federal CMS provides this exception to prescribers who submit and receive a federal CMS-approved waiver because the

[9] Section 456.43, F.S.
[10] "Electronic health record" means a record of a person's medical treatment which is created by a licensed health care provider and stored in an interoperable and accessible digital format. Section 408.051, F.S.
[11] *Centers for Medicare & Medicaid Services, Electronic Prescribing for Controlled Substances (EPCS) Program, available at* https://www.cms.gov/medicare/e-health/eprescribing/cms-eprescribing-for-controlled-substances-program (last visited Mar. 23, 2025).
[12] *Id.*

prescriber is unable to meet the federal CMS EPCS Program requirement due to circumstances beyond the prescriber's control.[13]

The bill deletes all other exceptions listed in current law, including all of the following:

- *(a) The practitioner and the dispenser are the same entity;*
  This was intended to mirror a similar federal requirement which has since been removed. On November 16, 2023, federal CMS published the 2024 Physician Fee Schedule final rule (CMS-1784-F)[14] which removed the exception to the EPCS requirement for prescriptions where the prescriber and dispensing pharmacy are the same legal entity. Effective January 1, 2025, all prescriptions for controlled substances under Medicare Part D must be transmitted electronically, regardless of whether the prescriber and dispenser are part of the same legal entity.

- (*b) The prescription cannot be transmitted electronically under the most recently implemented version of the National Council for Prescription Drug Programs SCRIPT Standard;*
  This was intended to mirror federal authority given to the Secretary of U.S. Department of Health and Human Services that was never exercised. The 2021 Physician Fee Schedule final rule (CMS-1734-F),[15] published on December 28, 2020, mandated that prescribers use the NCPDP National Council for Prescription Drug Programs' Stanford Computerized Researcher Information Profile Technique (SCRIPT) Standard Version 2017071 for EPCS transmissions. By adopting this standard, federal CMS did not include exceptions for prescriptions that could not be transmitted electronically under the most recent SCRIPT standard, thereby eliminating any previous allowances for such limitations.

- *(d) The practitioner reasonably determines that it would be impractical for the patient in question to obtain a medicinal drug prescribed by electronic prescription in a timely manner and such delay would adversely impact the patient's medical condition;*
  This was intended to mirror a similar federal requirement which has since been removed. On November 18, 2022, federal CMS published the 2023 Physician Fee Schedule final rule (CMS-1770-F),[16] which removed the exception to the EPCS requirement for prescriptions issued when it would be impractical for the patient to obtain the prescribed substance electronically and a delay would adversely impact the patient's medical condition.

- *(e) The practitioner is prescribing a drug under a research protocol;*

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[13] *Centers for Medicare & Medicaid Services, Electronic Prescribing for Controlled Substances (EPCS) Program, available at* https://www.cms.gov/medicare/e-health/eprescribing/cms-eprescribing-for-controlled-substances-program (last visited Mar. 23, 2025).

[14] *Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Final Rule*, 88 Fed. Reg. 81280 (Nov. 16, 2023), *available at* https://www.federalregister.gov/documents/2023/11/16/2023-24184/medicare-and-medicaid-programs-cy-2024-payment-policies-under-the-physician-fee-schedule-and-other (last visited Mar. 23, 2025).

[15] *Medicare Program; CY 2021 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies, Final Rule*, 85 Fed. Reg. 84472 (Dec. 28, 2020); *available at* https://www.govinfo.gov/content/pkg/FR-2020-12-28/pdf/2020-26815.pdf. (last visited Mar. 23, 2025).

[16] *Medicare and Medicaid Programs; CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies, Final Rule*, 87 Fed. Reg. 69404 (Nov. 18, 2022); *available at* https://www.govinfo.gov/content/pkg/FR-2022-11-18/pdf/2022-23873.pdf. (last visited Mar. 23, 2025).

This was intended to mirror a similar federal requirement which has since been removed. The exception permitting practitioners to issue non-electronic prescriptions for controlled substances when prescribing under a research protocol was removed in the Calendar Year (CY) 2022 Medicare Physician Fee Schedule final rule (CMS-1751-F),[17] which was published on November 19, 2021. In this rule, federal CMS finalized specific exceptions to the EPCS requirement, and the exception for prescriptions under a research protocol was not included among them, effectively removing it.

- *(f) The prescription is for a drug for which the federal Food and Drug Administration requires the prescription to contain elements that may not be included in electronic prescribing;*
  This was intended to mirror a similar federal requirement which has since been removed. The exception allowing practitioners to issue non-electronic prescriptions for drugs requiring specific elements by the Food and Drug Administration (FDA) that could not be included in electronic prescriptions was also removed in the Calendar Year (CY) 2022 Medicare Physician Fee Schedule final rule (CMS-1751-F).[18] In this rule, CMS finalized specific exceptions to the Electronic Prescribing for Controlled Substances (EPCS) requirement, and the exception for prescriptions requiring FDA-mandated elements not supported by electronic prescribing was not included among them, effectively removing it.

- *(g) The prescription is issued to an individual receiving hospice care or who is a resident of a nursing home facility; or*
  The exemption for individuals receiving hospice care from the federal electronic prescribing requirements for controlled substances under Medicare Part D was removed with the publication of the 2024 Physician Fee Schedule final rule (CMS-1784-F) by federalCMS on November 16, 2023.[19]

  However, the exemption for residents of long-term care (LTC) facilities (which generally include nursing home facilities in Florida law) from the federal electronic prescribing requirements for controlled substances under Medicare Part D has been extended by three years, from 2025 to 2028.[20] The federal CMS finalized a policy to delay compliance actions against prescribers who do not meet the EPCS requirement for prescriptions written for beneficiaries in LTC facilities until January 1, 2028.[21] This extension aligns the timeline for EPCS compliance in LTC facilities with the adoption of updated electronic prescribing

[17] *Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies, Final Rule,* 86 Fed. Reg. 64996 (Nov. 19, 2021); *available at* https://www.govinfo.gov/content/pkg/FR-2021-11-19/pdf/2021-23972.pdf. (last visited Mar. 23, 2025).
[18] *Id.*
[19] *Centers for Medicare & Medicaid Services, Medicare Program: CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Final Rule,* 88 Fed. Reg. 81280, 82539 (Nov. 16, 2023) (to be codified at 42 C.F.R. pt. 423).
[20] *American Medical Association, Summary of Final CY 2025 Medicare Physician Fee Schedule (PFS) Rule,* at 8 (2023); *available at* https://www.ama-assn.org/system/files/ama-2025-mpfs-summary.pdf (last visited Mar. 23, 2025).
[21] *Centers for Medicare & Medicaid Services, Electronic Prescribing for Controlled Substances (EPCS) Program, available at* https://www.cms.gov/medicare/e-health/eprescribing/cms-eprescribing-for-controlled-substances-program (last visited Mar. 23, 2025).

standards that include improved communication functionalities between pharmacies and LTC facilities.[22]

- *(h) The practitioner determines that it is in the best interest of the patient, or the patient determines that it is in his or her own best interest, to compare prescription drug prices among area pharmacies. The practitioner must document such determination in the patient's medical record.*
  This exception is unique to Florida law and is consistent with s. 456.24, F.S., which establishes that electronic prescribing may not interfere with a patient's freedom to choose a pharmacy.

  Prescribers who no longer qualify for an exception would be required to establish compliance with the bill's e-prescribing requirement upon their next scheduled license renewal or by July 1, 2026, whichever occurs first.

  By deleting the exceptions in current law, the bill would increase the number of prescriptions that prescribers must submit electronically. Prescribers who no longer meet an exception would be required to establish compliance with the e-prescribing requirement upon their next scheduled practitioner license renewal or by July 1, 2026, whichever occurs first.

  The Department of Health (DOH), in consultation with the Board of Medicine, the Board of Osteopathic Medicine, the Board of Podiatric Medicine, the Board of Dentistry, the Board of Nursing, and the Board of Optometry, is authorized, but not required to, adopt rules to implement this subsection encompassing the e-prescribing requirement. With this rulemaking authority, the DOH has incorporated a Request for Waiver form by reference, which would need to be updated to conform with changes made by the bill in its introductory paragraph.[23]

Sections 2 and 3 amend ss. 458.347 and 459.022, F.S., respectively, to conform a cross-reference to subsection (1) of s. 456.42, F.S., which is redesignated as subsection (2) in section 1 of the bill.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[22] *American Medical Association, Summary of Final CY 2025 Medicare Physician Fee Schedule (PFS) Rule,* at 8 (2023); *available at* https://www.ama-assn.org/system/files/ama-2025-mpfs-summary.pdf (last visited Mar. 23, 2025).
[23] Rule 64B-3.009, F.A.C. (2025).

C. Trust Funds Restrictions:

None.

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:

None.

C. Government Sector Impact:

The bill would require both the Department of Health (DOH) and the Board of Pharmacy to update rules that reference subsections of statute that are renumbered by the bill. [24] Additionally, all prescribing practitioners would need to be notified of the new requirements through the customer contact center virtual agent (ELI), board websites, and email notifications. The DOH indicates that current resources and budget authority are sufficient to absorb these nonrecurring costs and the temporary increase in workload. [25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.42, 458.347, and 459.022.

[24] Rules 64B-3.009 and 64B16-27.831(5), F.A.C. (2025).
[25] Department of Health, Senate Bill 1568, Legislative Analysis (Mar. 11, 2025) (on file with the Senate Committee on Health Policy).

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.