



# The Practical Need for Preemption

NCVHS Hearing

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# 50+ State Variances

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E-signature standards can vary at state level and are just one of the myriad of such variances in the functional requirements of e-prescribing.

Unless we have a national standard for all aspects of e-prescribing, prescribers and pharmacies will encounter barriers to implementing the technology needed to meet the expectations of all states.

# Practical Need for Preemption

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Medicine, including pharmacy, is practiced across state lines

- 18% filled in mail order pharmacies
- Growing segment using Specialty Pharmacies

Prescription must be legal where written

- If prescriber's state does not allow eRx, pharmacy cannot accept it
- Prescribers have an expectation that a legal prescription will be honored in receiving state

# At the State Level

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14 states have not addressed e-prescribing at the regulatory level

- 6 prohibit e-prescribing
- 8 “not prohibited” but no supporting rules



# At the State Level, cont.

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36 states have adopted regulations, but there are state variances that can be significant (12 footnotes in NABP summary chart)

- Board approval of e-prescribing vendors and pharmacy systems in 2 states
  - Board approval may also be required where there are no supporting regulations as pharmacies generally seek approval where there are no regulations to govern
- “no direct lines” to pharmacy
  - Intended to prohibited directing all prescriptions to a specific pharmacy, but may have the effect of preventing transmission to pharmacies that use a proprietary system
- “no access to Rx in transmission process”
  - Intended to prevent unauthorized changes to the prescription after the prescriber has “locked” the prescription, but all vendors must access the transaction in order to route the prescription the patient’s choice of pharmacy

# At the State Level, cont.

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36 states have adopted regulations, but there are state variances that can be significant (12 footnotes in NABP summary chart) – *(continued)*

- no controlled substances; no Schedule 2's
  - Regulations would still be in place after DEA has passed rules for transmitted controlled substances, causing a disconnect between federal and state law
- Prescriber must only be licensed in state for pharmacy to accept e-prescription
  - Pharmacies in that state would be unable to honor prescriptions that come from treating prescribers in other states, such as in special clinics treating the patient
- Paper record must be maintained once received
  - Electronic system that has the appropriate controls provides better documentation as it contains the complete transaction record

# When pharmacy cannot accept electronic prescription

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## On facsimile prescriptions

- 33 states allow “electronic” signatures

## On hard-copy prescriptions from electronic systems

- 28 states allow “electronic” signatures

“electronic” signature here is defined as a facsimile of the prescriber’s signature or a printed name created by the eRx system

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