



Physicians Caring for Texans

**VISION:** To improve the health of all Texans.

**MISSION:** TMA supports Texas physicians by providing distinctive solutions to the challenges they encounter in the care of patients.

# Mandatory E-Prescribing Requirement for Controlled Substances

## Frequently Asked Questions (FAQs)

TMA Office of the General Counsel

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### 1. Does Texas mandate e-prescribing for all controlled substances?

Yes. Effective Jan. 1, 2021, [House Bill 2174](#) (86th R) requires Texas physicians to electronically prescribe all controlled substances (Schedules II-V) unless an exception applies or a waiver is granted.

Note also effective Jan. 1, 2021, unless a separate exception applies, federal law requires e-prescribing for controlled substances (EPCS) in the Medicare Part D Prescription Drug Program. While the law is currently in effect, the Centers for Medicare & Medicaid Services (CMS) is delaying enforcement of the law until 2023 to give physicians additional time to make sure their e-prescribing practices for a covered Part D drug comply with federal law without risk of penalty. **Physicians are still required to e-prescribe all controlled substances under state law regardless of the delayed federal law enforcement unless an exception or waiver applies, discussed in FAQ Nos. 3-4.**

### 2. How do I sign up for e-prescribing controlled substances?

Your electronic health record (EHR) vendor likely has the option available for e-prescribing controlled substances. You should check with your EHR vendor to determine if the e-prescribing option is activated for your platform. EPCS is a separate function from traditional e-prescribing, and you may need to ask for this feature to be added. This add-on will likely be an added cost to your current EHR system.

If you do not use an EHR, your EHR does not have the required EPCS functionality, or the cost to add the functionality is too expensive, standalone options are available. The standalone option will cost about \$75 per month per physician. To search standalone certified EPCS software, go to the [Surescripts page for prescriber software](#) and “focus your search” by choosing “standalone eRx.”

### 3. Are there exceptions to the e-prescribing requirements for controlled substances?

Yes. There are [exceptions](#) to the **state** EPCS requirement that do not require a waiver:

- Under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient’s medical condition;



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- In circumstances in which electronic prescribing is not available due to temporary technological or electronic failure;
- By a practitioner to be dispensed by a pharmacy located outside this state;
- When the prescriber and dispenser are in the same location or under the same license;
- In circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing;
- For a drug for which the U.S. Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;
- For a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription; or
- For a drug under a research protocol.

There are also [exceptions](#) to the **Medicare** requirement that do not require a waiver:

- When the practitioner and dispensing pharmacy are the same entity;
- When the prescription cannot be transmitted electronically under the most recently implemented version of the National Council for Prescription Drug Programs SCRIPT Standard;
- Under circumstances in which, notwithstanding a practitioner's ability to submit a prescription electronically as required, the practitioner reasonably determines it would be impractical for the individual involved to obtain substances prescribed by electronic prescription in a timely manner, and such delay would adversely impact the individual's medical condition involved;
- By a practitioner prescribing a drug under a research protocol;
- By a practitioner for a drug for which the Food and Drug Administration requires a prescription to contain elements that are not able to be included in electronic prescribing, such as a drug with risk evaluation and mitigation strategies that include elements to assure safe use;
- By a practitioner for an individual who receives qualifying hospice care and is not covered under the applicable hospice benefit; and
- By a practitioner for an individual who is a resident of a nursing facility and dually eligible for applicable benefits under the law.

While some of these exceptions overlap, some are unique to each law. It is important to consult with your retained attorney if you have questions on whether you fall within an exception under the state or federal law, especially if you fall under the Medicare EPCS requirement.

#### **4. If I do not meet one of these exceptions, am I eligible for a waiver, and how do I apply?**

You may be eligible for a waiver. Under state law, to be eligible for a waiver, a physician must [submit a waiver](#) request to the Texas Medical Board (TMB) through the physician's MyTMB account and demonstrate either:

- Economic hardship, including:
  - Any special situational factors affecting either the cost of compliance or ability to comply,
  - The likely impact of compliance on profitability or viability, and
  - The availability of measures that would mitigate the economic impact of compliance;
- Technological limitations not reasonably within the control of the physician; or
- Other exceptional circumstances, which allows the physician an opportunity to show why he or she cannot comply with the requirement.

If the waiver is granted, it will appear on the physician's TMB public profile. A waiver, if approved, is valid for one year and can be renewed annually no earlier than 30 days before the waiver is set to expire.

For the Medicare EPCS requirement, CMS stated in its [final rule](#) published Dec. 28, 2020, in the *Federal Register* (.pdf pg. 332/*FR* pg. 84803) that it will provide information on waiver qualifications in future standalone rulemaking. TMA will monitor for additional guidance from CMS on this issue.

#### **5. Can my practice or hospital apply for a blanket waiver?**

No. Each physician e-prescribing controlled substances must apply individually for a waiver.

#### **6. If I receive a waiver and delegate prescribing authority for a controlled substance to a physician assistant or advanced practice nurse, does he or she need a separate waiver?**

No. The physician's waiver covers the physician's delegate. However, [remember](#) that a prescription for a controlled substance must contain the physician's name, address, telephone number, and U.S. Drug Enforcement Administration number.

#### **7. Where can I find additional information on EPCS?**

For more information on the state EPCS requirement, please visit [TMB's website](#); see also the [TMB rule on mandatory EPCS](#). You can also contact TMB with your EPCS questions at the following email address: [Registrations@tmb.state.tx.us](mailto:Registrations@tmb.state.tx.us).

For more information on the federal Medicare EPCS requirement, please visit [CMS's e-prescribing page](#). You can also review the [final CMS rule on EPCS](#).

If you have additional questions on EPCS, you can also contact TMA's Knowledge Center at (800) 880-7955 or by [email](#). You can also visit TMA's [prescribing resource center](#).



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