

Insights

The Long, Winding Road of Indiana's Electronic Prescribing Mandate

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Are you getting mixed messages on when you need to start electronically prescribing controlled substances? You're not alone.

After Congress passed the SUPPORT Act in 2018 requiring prescribers to issue electronic prescriptions on January 1, 2021 for Medicare Part D controlled substance prescriptions ("Federal Mandate"), Indiana enacted a similar requirement for all controlled substances ("State Mandate"). Then, a global pandemic struck, and both the Federal and State Mandates were delayed. That's not the end of the saga—Indiana law provides various exceptions to the State Mandate that are not reflected in the Federal Mandate.

Confused yet? Here's what you need to know as 2022 approaches:

- **Delayed federal compliance.** The Centers for Medicare and Medicaid Services ("CMS") delayed compliance with the Federal Mandate to January 1, 2023. CMS delayed the SUPPORT Act's January 1, 2021 compliance deadline to accommodate providers affected by the COVID-19 pandemic. Not only that, in its **final rule**, CMS announced a soft enforcement of noncompliance with the Federal Mandate between January 1 to December 31, 2023. Specifically, providers who fail to comply with the Federal Mandate during 2023 will only receive letters of noncompliance as opposed to financial penalties.
- **State Mandate Effective January 1, 2022.** Indiana lawmakers similarly delayed a state law requiring Indiana providers to implement an electronic prescribing of controlled substances (EPCS) platform via House Enrolled Act 1468¹. The State Mandate becomes effective January 1, 2022.
- **Federal delays cannot be counted on to delay compliance with Indiana's law.** Indiana providers should not rely on Federal delays to avoid compliance with the State Mandate. The Federal Mandate applies only to prescriptions of Medicare Part D controlled substances whereas Indiana's law applies to all controlled substance prescriptions. Indiana's law is also interpreted and enforced by State regulators.
- **Providers may be excepted from compliance.** Indiana providers may be excepted from compliance with the State Mandate when: (1) a prescriber cannot transmit an electronically transmitted prescription due to temporary technological failure or the technological inability to issue an electronic prescription (including



failure to possess the requisite technology); (2) a prescriber reasonably determines that it would be impractical for the patient to obtain an electronic prescription in a timely manner and such delay would adversely affect the patient; or (3) a prescriber obtains a waiver from the Board of Pharmacy. The Board of Pharmacy adopted an emergency rule regarding the waive process effective January 1, 2021 that will remain in place until July 1, 2023.

Indiana providers should focus on compliance with the State Mandate and determine whether they meet any statutory exceptions before January 1, 2022. Indiana providers should consult with legal counsel to interpret and understand their obligations under Indiana and federal law.

Please contact **Grant M. Achenbach** or **Brandon W. Shirley** if you need help navigating these legal requirements and your upcoming compliance obligations.

¹<http://iga.in.gov/legislative/2021/bills/house/1468>

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