

Senate Study Bill 3074 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED BOARD OF PHARMACY
BILL)

A BILL FOR

1 An Act relating to the electronic prescribing of prescription
2 drugs including controlled substances, making penalties
3 applicable, and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 124.308, Code 2018, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 **124.308 Prescriptions.**

5 1. Except when dispensed directly by a practitioner to an
6 ultimate user, a prescription drug as defined in section 155A.3
7 that is a controlled substance shall not be dispensed without
8 a prescription, unless such prescription is authorized by a
9 practitioner and complies with this section, section 155A.27,
10 applicable federal law and regulation, and rules of the board.

11 2. *a.* Beginning July 1, 2019, every prescription issued
12 for a controlled substance shall be transmitted electronically
13 as an electronic prescription pursuant to the requirements in
14 subsection 2, paragraph "b", unless exempt under subsection 2,
15 paragraph "c".

16 *b.* Except for prescriptions identified in paragraph "c",
17 a prescription that is transmitted pursuant to paragraph "a"
18 shall be transmitted to a pharmacy by a practitioner or the
19 practitioner's authorized agent in compliance with federal
20 law and regulation for electronic prescriptions of controlled
21 substances. The practitioner's electronic prescription system
22 and the receiving pharmacy's dispensing system shall comply
23 with federal law and regulation for electronic prescriptions of
24 controlled substances.

25 *c.* Paragraph "b" shall not apply to any of the following:

26 (1) A prescription for a patient residing in a nursing home,
27 long-term care facility, correctional facility, or jail.

28 (2) A prescription authorized by a licensed veterinarian.

29 (3) A prescription dispensed by a department of veterans
30 affairs pharmacy.

31 (4) A prescription requiring information that makes
32 electronic submission impractical, such as complicated or
33 lengthy directions for use or attachments.

34 (5) A prescription for a compounded preparation containing
35 two or more components.

1 (6) A prescription issued in response to a public health
2 emergency in a situation where a non-patient specific
3 prescription would be permitted.

4 (7) A prescription issued pursuant to an established and
5 valid collaborative practice agreement, standing order, or drug
6 research protocol.

7 (8) A prescription issued during a temporary technical or
8 electronic failure at the prescriber's or pharmacy's location.

9 (9) A prescription issued in an emergency situation
10 pursuant to federal law and regulation rules of the board.

11 d. A practitioner, as defined in section 124.101, subsection
12 27, paragraph "a", who violates paragraph "a" is subject
13 to an administrative penalty of two hundred fifty dollars
14 per violation, up to a maximum of five thousand dollars per
15 calendar year. The assessment of an administrative penalty
16 pursuant to this paragraph by the appropriate licensing board
17 of the practitioner alleged to have violated paragraph "a"
18 shall not be considered a disciplinary action and shall not be
19 released or reported as discipline. A practitioner may appeal
20 the assessment of an administrative penalty pursuant to this
21 paragraph, which shall initiate a contested case proceeding
22 under chapter 17A. A penalty collected pursuant to this
23 paragraph shall be deposited into the drug information program
24 fund established pursuant to section 124.557. The board shall
25 be notified of any administrative penalties assessed by the
26 appropriate professional licensing board and deposited into the
27 drug information program fund under this paragraph.

28 3. A prescription issued prior to July 1, 2019, or a
29 prescription that is exempt from the electronic prescription
30 requirement in subsection 2, paragraph "c", may be transmitted
31 by a practitioner or the practitioner's authorized agent to a
32 pharmacy in any of the following ways:

33 a. Electronically, if transmitted in accordance with
34 the requirements for electronic prescriptions pursuant to
35 subsection 2.

1 *b.* By facsimile for a schedule III, IV, or V controlled
2 substance, or for a schedule II controlled substance only
3 pursuant to federal law and regulation and rules of the board.

4 *c.* Orally for a schedule III, IV, or V controlled substance,
5 or for a schedule II controlled substance only in an emergency
6 situation pursuant to federal regulation and rules of the
7 board.

8 *d.* By providing an original signed prescription to a patient
9 or a patient's authorized representative.

10 4. If permitted by federal law and in accordance with
11 federal requirements, an electronic or facsimile prescription
12 shall serve as the original signed prescription and the
13 practitioner shall not provide a patient, a patient's
14 authorized representative, or the dispensing pharmacy with a
15 signed, written prescription. An original signed prescription
16 shall be retained for a minimum of two years from the date of
17 the latest dispensing or refill of the prescription.

18 5. A prescription for a schedule II controlled substance
19 shall not be filled more than six months after the date
20 of issuance. A prescription for a schedule II controlled
21 substance shall not be refilled.

22 6. A prescription for a schedule III, IV, or V controlled
23 substance shall not be filled or refilled more than six months
24 after the date on which the prescription was issued or be
25 refilled more than five times.

26 7. A controlled substance shall not be distributed or
27 dispensed other than for a medical purpose.

28 8. A practitioner, medical group, or pharmacy that is unable
29 to timely comply with the electronic prescribing requirements
30 in subsection 2, paragraph "b", may petition the board for an
31 exemption from the requirements based upon economic hardship,
32 technical limitations that the practitioner, medical group, or
33 pharmacy cannot control, or other exceptional circumstances.
34 The board shall adopt rules establishing the form and specific
35 information to be included in a request for an exemption

1 and the specific criteria to be considered by the board in
2 determining whether to approve a request for an exemption. The
3 board may approve an exemption for a period of time determined
4 by the board not to exceed one year from the date of approval,
5 and may be renewed annually upon request subject to board
6 approval.

7 Sec. 2. Section 155A.27, Code 2018, is amended by striking
8 the section and inserting in lieu thereof the following:

9 **155A.27 Requirements for prescription.**

10 1. Except when dispensed directly by a prescriber to an
11 ultimate user, a prescription drug shall not be dispensed
12 without a prescription, authorized by a prescriber, and based
13 on a valid patient-prescriber relationship.

14 2. *a.* Beginning July 1, 2019, every prescription issued for
15 a prescription drug shall be transmitted electronically as an
16 electronic prescription to a pharmacy by a prescriber or the
17 prescriber's authorized agent unless exempt under paragraph
18 "b".

19 *b.* Paragraph "a" shall not apply to any of the following:

20 (1) A prescription for a patient residing in a nursing home,
21 long-term care facility, correctional facility, or jail.

22 (2) A prescription authorized by a licensed veterinarian.

23 (3) A prescription for a device.

24 (4) A prescription dispensed by a department of veterans
25 affairs pharmacy.

26 (5) A prescription requiring information that makes
27 electronic transmission impractical, such as complicated or
28 lengthy directions for use or attachments.

29 (6) A prescription for a compounded preparation containing
30 two or more components.

31 (7) A prescription issued in response to a public health
32 emergency in a situation where a non-patient specific
33 prescription would be permitted.

34 (8) A prescription issued for an opioid antagonist pursuant
35 to section 135.190 or a prescription issued for epinephrine

1 pursuant to section 135.185.

2 (9) A prescription issued during a temporary technical
3 or electronic failure at the location of the prescriber or
4 pharmacy.

5 (10) A prescription issued pursuant to an established and
6 valid collaborative practice agreement, standing order, or drug
7 research protocol.

8 (11) A prescription issued in an emergency situation
9 pursuant to federal law and regulation and rules of the board.

10 c. A practitioner, as defined in section 124.101, subsection
11 27, paragraph "a", who violates paragraph "a" is subject
12 to an administrative penalty of two hundred fifty dollars
13 per violation, up to a maximum of five thousand dollars per
14 calendar year. The assessment of an administrative penalty
15 pursuant to this paragraph by the appropriate licensing board
16 of the practitioner alleged to have violated paragraph "a"
17 shall not be considered a disciplinary action and shall not be
18 released or reported as discipline. A practitioner may appeal
19 the assessment of an administrative penalty pursuant to this
20 paragraph, which shall initiate a contested case proceeding
21 under chapter 17A. A penalty collected pursuant to this
22 paragraph shall be deposited into the drug information program
23 fund established pursuant to section 124.557. The board shall
24 be notified of any administrative penalties assessed by the
25 appropriate professional licensing board and deposited into the
26 drug information program fund under this paragraph.

27 3. For prescriptions issued prior to July 1, 2019, or
28 for prescriptions exempt from the electronic prescription
29 requirement in subsection 2, paragraph "b", a prescriber or the
30 prescriber's authorized agent may transmit a prescription for a
31 prescription drug to a pharmacy by any of the following means:

32 a. Electronically.

33 b. By facsimile.

34 c. Orally.

35 d. By providing an original signed prescription to a patient

1 or a patient's authorized representative.

2 4. A prescription shall be issued in compliance with
3 this subsection. Regardless of the means of transmission, a
4 prescriber shall provide verbal verification of a prescription
5 upon request of the pharmacy.

6 a. If written, electronic, or facsimile, each prescription
7 shall contain all of the following:

8 (1) The date of issue.

9 (2) The name and address of the patient for whom, or the
10 owner of the animal for which, the drug is dispensed.

11 (3) The name, strength, and quantity of the drug prescribed.

12 (4) The directions for use of the drug, medicine, or device
13 prescribed.

14 (5) The name, address, and written or electronic signature
15 of the prescriber issuing the prescription.

16 (6) The federal drug enforcement administration number, if
17 required under chapter 124.

18 b. If electronic, each prescription shall comply with all
19 of the following:

20 (1) The prescriber shall ensure that the electronic system
21 used to transmit the electronic prescription has adequate
22 security and safeguards designed to prevent and detect
23 unauthorized access, modification, or manipulation of the
24 prescription.

25 (2) Notwithstanding paragraph "a", subparagraph (5),
26 for prescriptions that are not controlled substances, if
27 transmitted by an authorized agent, the electronic prescription
28 shall not require the written or electronic signature of the
29 prescriber issuing the prescription.

30 c. If facsimile, in addition to the requirements of
31 paragraph "a", each prescription shall contain all of the
32 following:

33 (1) The identification number of the facsimile machine
34 which is used to transmit the prescription.

35 (2) The date and time of transmission of the prescription.

1 (3) The name, address, telephone number, and facsimile
2 number of the pharmacy to which the prescription is being
3 transmitted.

4 d. If oral, the prescriber issuing the prescription
5 shall furnish the same information required for a written
6 prescription, except for the written signature and address
7 of the prescriber. Upon receipt of an oral prescription,
8 the recipient shall promptly reduce the oral prescription to
9 a written format by recording the information required in a
10 written prescription.

11 e. A prescription transmitted by electronic, facsimile,
12 or oral means by a prescriber's agent shall also include
13 the name and title of the prescriber's agent completing the
14 transmission.

15 5. An electronic, facsimile, or oral prescription
16 shall serve as the original signed prescription and the
17 prescriber shall not provide a patient, a patient's authorized
18 representative, or the dispensing pharmacist with a signed
19 written prescription. Prescription records shall be retained
20 pursuant to rules of the board.

21 6. This section shall not prohibit a pharmacist,
22 in exercising the pharmacist's professional judgment,
23 from dispensing, at one time, additional quantities of a
24 prescription drug, with the exception of a prescription drug
25 that is a controlled substance as defined in section 124.101,
26 up to the total number of dosage units authorized by the
27 prescriber on the original prescription and any refills of
28 the prescription, not to exceed a ninety-day supply of the
29 prescription drug as specified on the prescription.

30 7. A prescriber, medical group, institution, or pharmacy
31 that is unable to timely comply with the electronic prescribing
32 requirements in subsection 2, paragraph "a", may petition
33 the board for an exemption from the requirements based upon
34 economic hardship, technical limitations that the prescriber,
35 medical group, institution, or pharmacy cannot control, or

1 other exceptional circumstances. The board shall adopt rules
2 establishing the form and specific information to be included
3 in a request for an exemption and the specific criteria to be
4 considered by the board in determining whether to approve a
5 request for an exemption. The board may approve an exemption
6 for a period of time determined by the board, not to exceed one
7 year from the date of approval, and may be annually renewed
8 subject to board approval upon request.

9 Sec. 3. Section 155A.29, subsection 4, Code 2018, is amended
10 to read as follows:

11 4. An authorization to refill a prescription drug order ~~may~~
12 shall be transmitted to a ~~pharmacist~~ pharmacy by a prescriber
13 or the prescriber's authorized agent ~~through word of mouth,~~
14 ~~note, telephone, facsimile, or other means of communication~~
15 ~~initiated by or directed by the practitioner. The transmission~~
16 ~~shall include the information required pursuant to section~~
17 155A.27, except that prescription drug orders for controlled
18 substances shall be transmitted pursuant to section 124.308,
19 and, if not transmitted directly by the practitioner,
20 shall ~~identify by~~ also include the name and title of the
21 practitioner's agent completing the transmission.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill relates to the electronic prescribing of
26 prescription drugs, including controlled substances. The
27 bill requires all prescriptions for prescription drugs to
28 transmitted to a pharmacy electronically, effective July 1,
29 2019. The bill also requires prescriptions for controlled
30 substances that are issued electronically to comply with
31 federal law for the electronic transmittal of prescriptions
32 for controlled substances. The bill provides exemptions
33 from this requirement in certain circumstances and provides
34 alternative methods for the transmittal of prescriptions in
35 those circumstances and for prescriptions transmitted prior to

1 July 1, 2019. The bill also allows a person subject to the
2 requirements of the bill to petition the board of pharmacy
3 for exemption from the requirements of the bill based on
4 economic hardship, technical limitations, or other exceptional
5 circumstances. The bill requires refills for prescription
6 drugs and controlled substances to be transmitted in the same
7 manner as required for initial prescriptions.

8 A practitioner who does not transmit a prescription
9 drug order electronically as required by the bill shall be
10 subject to an administrative penalty of \$250 per violation,
11 up to a maximum of \$5,000 per calendar year. Such a penalty
12 shall be assessed by the professional licensing board of the
13 practitioner alleged to have committed the violation. A
14 practitioner may contest such penalty, which shall initiate a
15 contested case proceeding under Code chapter 17A. Any such
16 penalty collected by a professional licensing board shall be
17 deposited into the drug information program fund and reported
18 to the board.

19 A person who does not comply with Code section 124.308
20 is guilty of an aggravated misdemeanor pursuant to Code
21 section 124.402. An aggravated misdemeanor is punishable by
22 confinement for no more than two years and a fine of at least
23 \$625 but not more than \$6,250.