ISMA E-PRESCRIBING: STATE LAW GUIDANCE

In 2019, the Indiana General Assembly passed SEA 176, which requires prescribers to issue prescriptions for controlled substances electronically starting Jan. 1, 2021. This law was meant to mirror a federal law passed in 2018 that requires prescriptions for covered Medicare Part D drugs under a prescription drug plan for a schedule II, III, IV, or V controlled substance to be "transmitted by a health care practitioner electronically" starting on Jan. 1, 2021.

The state law applies to all controlled substances, not just Medicare Part D enrollees. However, the state mandate has some significant exceptions secured through ISMA's advocacy efforts. These exceptions are listed below. According to Indiana Code § 25-1-9.3-8, a prescriber may issue a prescription for a controlled substance in a written format, a faxed format, or an oral order if any of the following apply:

- The prescriber cannot transmit an electronically transmitted prescription due to temporary technological or electrical failure.
- The prescriber cannot transmit an electronically transmitted prescription due to the technological inability to issue a prescription electronically, including but not limited to failure to possess the requisite technology.
- The prescriber reasonably determines that it would be impractical for the patient to obtain an electronic prescription in a timely manner and the delay would adversely affect the patient's medical condition.
- The prescriber issues a prescription to be dispensed by a pharmacy located outside Indiana.
- The prescriber and the pharmacist are the same entity.
- The prescriber issues a prescription that meets any of the following:
    - The prescription contains elements that are not supported by the technical standards developed by the National Council for Prescription Drug Programs for electronically transmitted prescriptions (NCPDP SCRIPT).
    - The federal Food and Drug Administration requires the prescription to contain certain elements that cannot be supported in an electronically transmitted prescription.
    - The prescription is a non-patient-specific prescription in response to a public health emergency or another instance allowable under state law and that requires a non-patient-specific prescription under:
        - A standing order;
        - Approved protocol for drug therapy;

        - Collaborative drug management; or
        - Comprehensive medication management.
    - The prescription is issued under a research protocol.
- The prescriber has received a waiver or a renewal of a previously received waiver from the Board of Pharmacy in accordance with Board of Pharmacy rules.
- The Board of Pharmacy has issued a rule providing for another exception not described above (no such rules have been promulgated to date).

In addition, the Board of Pharmacy (in consultation with the Medical Licensing Board) is charged with promulgating rules that include a process to grant or deny waivers or renewals of waivers from the requirement to issue electronically transmitted prescriptions for controlled substances due to (1) economic hardship; (2) technological limitations outside the control of the prescriber; or (3) other circumstances determined by the Board of Pharmacy.

To date, no waiver process has been implemented by the Board of Pharmacy. However, the exceptions set forth in the bulleted list above exist regardless of whether a physician obtains a waiver from the Board of Pharmacy