



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

September 7, 2022

The Honorable Gavin Newsom, Governor
State of California
1021 O Street, Suite 9000
Sacramento, CA 94249-0024

Re: AB 852 (Wood) Electronic Prescriptions – VETO REQUEST

Dear Governor Newsom,

The California Retailers Association (CRA) and the National Association of Chain Drug Stores (NACDS) must regretfully request that you veto AB 852 (Wood), legislation that would revise requirements originally enacted under AB 2789 (Wood, Ch. 438, Statutes of 2018) pertaining to electronic prescription transmission (“e-prescribing”).

Although we are supportive of certain provisions in AB 852, we have serious concerns with the language in Section 688(b)(2) specifying that pharmacies cannot refuse an electronic prescription that is not compatible with the pharmacy’s software. In order to accept electronic prescriptions from e-prescribing platforms that pharmacists do not have established connections with, pharmacies must undertake involved system changes to support compatibility. As drafted, AB 852 would provide inadequate lead-time for pharmacies to complete these processes and implement system changes prior to accepting electronic prescriptions from new platforms prior to the January 1, 2023 implementation date, which may thereby force many pharmacies out of compliance when the bill goes into effect.

Originally, AB 852 was intended to clarify and remedy certain implementation concerns with respect to AB 2789 (enacted in 2018), which established that prescriptions in California must be issued and transmitted electronically and that all prescribers and dispensers must have the capability to facilitate this practice effective January 1, 2022. Even prior to enactment of this law, e-prescribing had long been widely used and accepted among California healthcare providers with 96% of pharmacies and 77% of prescribers having already implemented the system capabilities to support the process. The systems used to facilitate e-prescribing have been built and implemented over decades by healthcare providers who recognized early on the numerous safety and security benefits of deploying electronic prescription technologies in their practices.

Given the indisputable benefits of e-prescribing, CRA and NACDS were pleased to support AB 2789 when it was being considered by the Legislature in 2018. We worked with the author as the legislation advanced through the legislative process to ensure that implementation of AB 2789 would not unintentionally impede the use of existing systems or otherwise impose burdens on healthcare providers who had already deployed e-prescribing systems in their practices. Unfortunately, when the law was implemented this year, it became clear that there were certain issues that needed additional clarification so that processes for e-prescribing would be workable within the parameters of California law (e.g., the transfer of controlled substance prescriptions). Unfortunately, AB 852 was amended to further include new

provisions that would effectively require pharmacies to accept electronically transmitted prescriptions that may not be compatible with their existing proprietary software. Such a requirement would force pharmacies to contract with all e-prescribing platforms, even if those platforms are not compatible with a pharmacy's systems.

Of particular concern, AB 852 would require pharmacies to accept electronic prescriptions without advance notice and minus the lead time necessary to build out system capabilities both internally and with external system vendors to accommodate this. The process for readying a pharmacy system to accept electronic prescriptions from new vendors is complex and includes activities such as negotiating and implementing a contract with vendors, verifying that all involved parties are operating in compliance with all federal and state requirements related to e-prescribing (including for controlled substance prescriptions) and making pharmacy systems changes to achieve interoperability (which may further involve work with additional vendor(s)). As currently drafted, AB 852 would give pharmacies inadequate time to comply, as the requirements of the legislation would take effect immediately upon enactment. Without ample time for pharmacies to complete the processes necessary to accept electronic prescriptions from a new vendor, it is both conceivable and likely that the resulting disruption to electronic prescribing would impede patient access to prescribed therapies, thereby increasing health care costs for Californians and ultimately putting fiscal pressure on the state – particularly in the Medi-Cal program.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which operates over 400,000 retail establishments with a gross domestic product of billions annually and employs millions of Californians.

NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate over 40,000 pharmacies, and NACDS' over 80 chain member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 900 supplier partners and over 70 international members representing 21 countries. Please visit NACDS.org.

To ensure that e-prescribing remains workable for the pharmacies that have been participating in this practice for years, CRA and NACDS urge you to veto AB 852. While we do appreciate that AB 852 includes provisions that would otherwise clarify that pharmacies may decline electronic prescriptions that do not meet industry standards, federal and state laws and privacy requirements, we oppose AB 852 for the reasons stated above.

We understand the ongoing need for the original provisions of AB 852 that clarify matters relating to the transfer of controlled substances prescriptions, and we commit to working with the Legislature in 2023 on new legislation that addresses these additional implementation items relating to appropriate implementation of the requirements of AB 2789.

Please do not hesitate to contact Jennifer Snyder or Lindsay Gullahorn with Capitol Advocacy at jsnyder@capitoladvocacy.com or lgullahorn@capitoladvocacy.com if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rachel Michelin".

Rachel Michelin, President
California Retailers Association

A handwritten signature in black ink, appearing to read "Steve C. Anderson".

Steve C. Anderson, FASAE, CAE, IOM
President & Chief Executive Officer
National Association of Chain Drug Stores

cc: The Honorable Jim Wood, Author
Stuart Thompson, Chief Deputy Legislative Secretary, Office of Governor Newsom