

## DEPARTMENT OF REGULATORY AGENCIES

### Colorado Medical Board

## RULE 160 – ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

### 3 CCR 713-47

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### 47.1 INTRODUCTION

- A. Basis: The general authority for the promulgation of these rules and regulations by the Colorado Medical Board ("Board") as set forth in sections 12-20-204(1), 12-240-106(1)(a), and 12-30-111(2), C.R.S.
- B. These Rules will be effective on July 1, 2021, and are adopted by the Board pursuant to section 12-30-111(2), C.R.S., in order to define a temporary technological failure, a temporary electrical failure, and an economic hardship for purposes of sections 12-30-111(1)(a)(1) and 12-30-111(1)(a)(XI), C.R.S., as well as to explain the process for a prescriber to demonstrate an economic hardship exception to the requirement to prescribe controlled substances electronically as required by section 12-30-111(1)(a), C.R.S.

#### 47.2 RULES AND REGULATIONS

- A. Pursuant to section 12-30-111(1)(a), C.R.S., a prescriber, which includes physicians and physician assistants, shall prescribe a controlled substance as set forth in section 12-30-111(1)(a), C.R.S., only by electronic prescription transmitted to a pharmacy unless an exception in section 12-30-111(1)(a), C.R.S., applies.
- B. A "temporary technological failure," for purposes of section 12-30-111(1)(a)(I), C.R.S., is when:
  - 1. A necessary prescribing software program is inaccessible or otherwise not operational;
  - 2. Required technology fails to start; or
  - 3. During a period when a virus or cyber security breach is actively putting patient data and transmission at risk.
- C. A "temporary electrical failure," for purposes of section 12-30-111(1)(a)(I), C.R.S., is a short-term loss of electrical power at the place of business that lasts no more than forty-eight hours or two consecutive business days unless there is a showing of undue hardship.
- D. An "economic hardship," for purposes of section 12-30-111(1)(a)(XI), C.R.S., is a measurement of relative need taking into consideration the individual gross receipts and net profits, cost of compliance, and type of software upgrade required. In order for a prescriber to demonstrate economic hardship, the prescriber must submit to the Board for a final determination:

1. A written statement explaining the economic hardship, including supporting documentation to demonstrate economic hardship. Supporting documentation may, but need not, include the most recent tax return or other business records that show gross receipts and net profits. The Board reserves the right to request additional documentation to support the request, if necessary. The request must also include the requested duration of the economic hardship.
2. If the Board determines there should be an economic hardship exception for the prescriber, then the Board will determine the duration of the economic hardship exception, which shall not exceed one year from the date the exception was granted.
3. In order to renew a request for an economic hardship exception, the prescriber must submit a request to renew the exception in writing to the Board no less than two months prior to the expiration of the economic hardship exception. The prescriber must provide a written statement explaining the need to renew the economic hardship, including supporting documentation.

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**Editor's Notes**

**History**

New rule eff. 02/14/2021.