

## The National Association of State Controlled Substances Authorities

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September 19, 2008

Drug Enforcement Administration  
Attention: DEA Federal Register Representative/ODL  
8701 Morrisette Drive  
Springfield, VA 22152

Re: Docket No. DEA-218

Dear Federal Register Representative:

I am writing to you on behalf of the National Association of State Controlled Substances Authorities (NASCSA) to provide comment on Docket No. DEA-218, the proposed rule of the Drug Enforcement Administration (DEA) on Electronic Prescriptions for Controlled Substances as appearing in the Federal Register of June 27, 2008.

The National Association of State Controlled Substances Authorities a 501(C)(3) non-profit educational organization was established in 1985. NASCSA's primary purpose is to provide a continuing mechanism through which state and federal agencies, as well as others can work to increase the effectiveness and efficiency of state and national efforts to prevent and control drug diversion and abuse; and, to provide an educational forum to further this purpose. NASCSA members support and endorse laws, rules, and regulations to ensure that controlled substances are accessible to those persons who have a legitimate medical need.

NASCSA supports DEA's initiative to develop regulations to permit e-prescribing of controlled substances. E-prescribing has the potential to improve patient health and safety while decreasing drug diversion. Although NASCSA is in favor of regulations in this area, a number of states that are members of the organization have raised questions concerning potential impacts of the proposed rule on state agencies, including the need for legal authority, infrastructure and budgets to carry out certain sections of the rule as proposed.

Specifically, some member states have raised the following concerns with regard to proposed Sec. 1311.105, entitled, "Electronic prescription system requirements: Identity proofing."

1. Many hospitals might agree to conduct in-person identity proofing, but others might not. Dentists, mid-level practitioners and certain other prescribers do not usually have hospital affiliations and may choose not to go to hospitals, or be turned away. Thus, regardless of the number of hospitals that agree to conduct identity proofing, states would need to be prepared to conduct in-person identity proofing as well.
2. Regardless of which entity conducts the identity proofing, the state licensing agencies will incur additional costs simply to respond to the additional requests for verification that a license is current and in good standing. Even if a state provides on-line licensure information, potential inquiries such as phone verification would be yet another burden on state agencies. Moreover, since the proposed provision would also require service providers to conduct credentialing, state licensing agencies as well as state controlled substances agencies will incur yet additional costs of credentialing over and above those for credentialing for identity proofing.
3. For a state agency to conduct identity proofing, it would likely need to have the appropriate legal authority. This might require statutory authority in some states, regulatory authority in others, or a combination of both types of authority. It is possible that some states might not grant such authority. If a state were interested in granting such authority, it can be a challenging, lengthy and costly process to establish laws and regulations.

4. If a state agency were to obtain legal authority to conduct identity proofing, it still would require infrastructure, budgets, rules, procedures, and defined qualifications and training for staff.
5. To establish infrastructure to conduct identity proofing, many state agencies would need to have an appropriation from the state legislature. If an agency were to have authority to collect fees from prescribers seeking identity proofing, many states still require an appropriation to retain such fees to support infrastructure and costs. Even with an appropriation, a state agency might not have sufficient funding to cover all costs of identity proofing; and, increases in costs in future years would not necessarily be accompanied by increases in appropriations.
6. Staff training would not be simple because staff would be required to verify that each photographic identification is valid; match the photograph on the identification with the person presenting the identification; sign a statement that the applicant is who (s)he claims to be; and, include a statement that the photograph and person presenting the identification match. This requires a high level of qualification and functioning that also entails a high level of management and oversight.
7. In addition to the costs for the identity proofing transaction (i.e., face-to-face meeting of prescriber and agency staff) estimated in DEA's cost analysis, there would be other cost factors related to identity proofing. These include, but are not necessarily limited to: costs of staff hiring, supervision and support; recordkeeping, document storage and archiving; responding to requests for identity proofing documentation; and physical plant costs for staff, equipment and materials.
8. In addition to infrastructure, training and other costs, there could be potential legal ramifications and costs associated with identity proofing. Staff errors in identity proofing and misuse of identity proofing, for example, would present legal and human resource costs on state agencies. Legal staff time would also be needed for writing rules and policies and for adjudicating complaints.

Our organization asks DEA to consider alternative approaches to identity proofing and license checking that do not involve only hospitals and state agencies. We respectfully submit that the proposed scheme for in-person identity proofing is duplicative of federal and state issuance of photographic identification and is less secure. A state identity proofing letter or document could be much more readily forged or misused than a government-issued photographic identification.

Possible solutions to address concerns about potential identity fraud that may appeal to some of our member states include having the service provider check a government-issued photographic identification and state license. To address security concerns with such identity proofing, DEA could consider third-party auditing of the identity proofing conducted by service providers. Such auditing would be somewhat analogous to the proposed third-party auditing of systems security and integrity, and would not present many of the potential impediments outlined here.

Thank you in advance for your consideration of the concerns raised here by NASCSA member states. We would welcome the opportunity to discuss with you alternative approaches to address these concerns. If you have any questions or need additional information, please contact me via email at [Karen.tannert@dshs.state.tx.us](mailto:Karen.tannert@dshs.state.tx.us) or Kathy Keough, Executive Director at [kathykeough@nascsa.org](mailto:kathykeough@nascsa.org).

Sincerely,



Karen Tannert, R.Ph., M.P.H.  
President  
National Association of State Controlled Substances Authorities