

50.2 – State Law Preemption

(Rev. 3, Issued: 09-05-08, Effective: 09-01-08, Implementation: 09-01-08)

Section 1860D-4(e)(5) of the Act preempts State laws and regulations that are either contrary to the Federal standards or that restrict the ability to carry out (that is, stand as an obstacle to), the electronic prescription drug program requirements, and that also pertain to the electronic transmission of prescriptions or certain information regarding Part D drugs for Part D eligible individuals. CMS has identified several categories of State laws that are preempted in whole, or in part. These categories are intended to be examples and do not constitute an exhaustive list. Those categories of State laws that are preempted include:

1. State laws that expressly prohibit electronic prescribing.
2. State laws that prohibit the transmission of electronic prescriptions through intermediaries, such as networks and switches or pharmacy benefit managers (PBMs), or that prohibit access to such prescriptions by plans or their agents or other duly authorized third parties.

3. State laws that require certain language to be used, such as dispense as written, to indicate whether generic drugs may or may not be substituted, insofar as such language is not consistent with the adopted standard.
4. State laws that require handwritten signatures or other handwriting on prescriptions.