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September 13, 2021

The Honorable Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Baltimore, MD 21244 Centers for Medicare & Medicaid Services

RE: Medicare Program: CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies (CMS-1751-P)

Dear Administrator Brooks-LaSure:

We appreciate the opportunity to submit comments in response to the CY 2022 Physician Fee Schedule Proposed Rule (the "Proposed Rule") issued by the Centers for Medicare & Medicaid Services ("CMS"). Our comments focus exclusively on the proposal to mandate that Part D prescribers use an electronic prescribing module to prescribe controlled substances as required by Section 2003 of the SUPPORT for Patients and Communities Act of 2018 (the "SUPPORT Act").

Surescripts serves the nation with the most trusted and capable health information network, built to increase patient safety, lower costs, and ensure quality care. Founded in 2001 to enable electronic prescribing, today we are drawing on that experience to exchange many other kinds of actionable patient intelligence—including medication histories, prior authorizations, and other complex clinical messages. The Surescripts Network Alliance includes virtually all electronic health record (EHR) vendors, pharmacy benefit managers (PBMs), pharmacies and clinicians, plus health plans, long-term and post-acute care organizations and specialty hubs and specialty pharmacy organizations. In 2020, we transmitted 17.5 billion secure health data transactions—including 1.91 billion e-prescriptions and 1.95 billion medication histories—and connected 2 million healthcare professionals, who rely on a master patient index covering 95% of the U.S. population. Additional information about Surescripts is available at surescripts.com. For more data on how we're advancing nationwide health information exchange, please see our National Progress Report, available at <https://surescripts.com/report>.

Surescripts has consistently supported efforts by Congress and CMS to require the use of electronic prescribing of controlled substances (EPCS) for Part D prescribers. The benefits of EPCS are well documented and acknowledged in the Proposed Rule. In addition to deterring and detecting prescription fraud, EPCS enhances patient safety and reduces burdens that prescribers, pharmacists, and patients face when dealing with a paper-based system.

We commend CMS for continuing the work of implementing the SUPPORT Act provisions that established a federal EPCS mandate. We also commend CMS's decision not to propose an exemption for prescribers issuing prescriptions for individuals who are residents of a nursing facility and eligible for Medicare and Medicaid benefits. As CMS noted in the Proposed Rule, nursing homes are particularly at risk for drug diversion. Requiring EPCS in these settings will help ensure the security and veracity of prescriptions for nursing home residents.

While we support many provisions of the Proposed Rule, we strongly disagree with the proposal to create yet another delay in enforcement of the mandate. Instead, we ask that CMS comply with the enforcement date of January 1, 2022, as established in the CY 2021 Medicare Physician Fee Schedule (PFS) Final Rule.

As we pointed out in our comments on the CY 2021 PFS proposed rule, Congress initially proposed a deadline of January 1, 2020, for full implementation of the EPCS mandate. At CMS's request, Congress agreed to extend the deadline to January 1, 2021, in the final version of SUPPORT Act, which was enacted in September 2018 -- a full three years ago. Subsequently, in the 2021 PFS Rule CMS created a second one-year delay to full implementation. The suggestion that a third delay is justified because of "concern with having to implement EPCS rapidly," is at odds with the facts. There would be nothing "rapid" about implementing a law that will be four years old in 2022. Moreover, providers have been on notice since issuance of the PFS rule last year that enforcement would begin in January 2022.

EPCS is a well-established technology. Nearly 70 percent of prescribers nationwide are already EPCS-enabled as are 96.2% of pharmacies nationwide. Over half of the states have passed laws to require use of EPCS. Importantly, among the states with mandates, those that have implemented enforcement mechanisms have seen adoption of EPCS grow at faster rates than states without enforcement mechanisms. Therefore, it is critical for CMS to fully implement the federal mandate by putting enforcement mechanisms in place on January 1, 2022. We believe that the exceptions CMS has proposed will fully protect providers for whom the mandate would be burdensome or infeasible.

The most compelling argument for full implementation in January 2022 is the significant public health risk associated with further implementation delays:

- As we struggle to reduce exposure to COVID-19 and its Variants, EPCS is a valuable tool for seniors, a group at higher risk of serious illness from infection. Seniors without access to EPCS-enabled providers increase their risks of exposure when they must make otherwise unnecessary office visits to collect paper prescriptions for controlled substances, followed by a visit to the pharmacy to drop off the paper prescription and a second visit to collect the prescription when it is filled. EPCS eliminates the need for office visits and multiple pharmacy visits that increase potential points of exposure.
- The opioid epidemic that the SUPPORT Act was designed to address has worsened over the course of the COVID pandemic. In its August 2021 Issue Brief entitled "Nation's Drug-Related Overdose and Death Epidemic Continues to Worsen," the American Medical Association reported that "every state has experienced a spike or increase in overdose deaths during the pandemic. Overdoses related to prescription opioids and heroin remain high and are increasingly adulterated with fentanyl." In this environment, where drug overdose deaths in 2020 increased 30.5 percent over the previous year, we should be deploying all available tools to detect and prevent drug diversion. EPCS is one of those tools and should be fully implemented without further delay.

We therefore urge CMS to modify the January 1, 2023, enforcement date proposed by CMS in the CY 2022 Medicare Physician Fee Schedule Proposed Rule to instead reflect the January 1, 2022, deadline originally proposed by CMS.

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We thank you for the opportunity to comment on the proposal and we look forward to working with you and supporting full implementation of EPCS for Part D.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Ann Chaffee". The signature is fluid and cursive, with the first name "Mary" and last name "Chaffee" being the most prominent parts.

Mary Ann Chaffee

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