

1240 N Pitt St, 3<sup>rd</sup> Floor  
Alexandria, VA 22314  
703.739.1300



October 5, 2020

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-3394-NC  
7500 Security Boulevard  
Baltimore, MD 21244-1850

**Re: Medicare Program: Electronic Prescribing of Controlled Substances; Request for Information (RFI)**

Dear Administrator Verma:

The American Society of Consultant Pharmacists (ASCP) is the only professional society devoted to optimal medication management and improved health outcomes for all older persons in the United States and abroad. ASCP's senior care pharmacist and pharmacy members manage and improve quality of life for geriatric patients and other individuals residing in a variety of environments including nursing facilities, sub-acute care and assisted living facilities, psychiatric hospitals, hospice programs, and home and community-based care.

We are grateful for the opportunity to comment on the Centers for Medicare and Medicaid Services' (CMS) Request for Information (RFI) regarding implementation of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act's requirement that prescriptions for controlled substances covered under a Medicare Part D prescription drug plan or Medicare Advantage Prescription Drug Plan (MA/PD) be transmitted by a health care practitioner electronically in accordance with an electronic prescription drug program, beginning January 1, 2021. Section 2003 of the SUPPORT Act provides CMS with the authority to, through rulemaking, enforce and specify appropriate penalties for noncompliance with the requirement for electronic prescribing of controlled substances (EPCS). The SUPPORT Act also requires CMS to specify, through rulemaking, circumstances and processes by which it may waive this EPCS requirement. We have limited our comments to possible waivers of this EPCS requirement, and more specifically, a waiver for prescriptions issued for individuals residing in long-term care facilities (LTCF).

**LTC E-Prescribing Challenge: Three-Party Communication**

ASCP appreciates CMS' recognition that e-prescribing in the LTC setting poses a unique challenge "due to the necessary three-way communication involving the prescriber, the facility

and the pharmacy” (85 Fed. Reg. at 47156). This three-way data communication can create inefficiencies that result in delaying urgent medication therapy for LTC residents as well as opportunities for medication errors . Currently, prescribers utilize one of two process flows to electronically prescribe controlled substances for LTC residents, both of which have challenges as a result of this three-party communication need.

#### *Prescriber Logs Into the LTC Facility’s EHR System*

A prescriber may opt to log-in to a LTCF’s EHR system via a web portal for the purpose of entering and transmitting an electronic prescription to the facility’s provider pharmacy. In these situations, a prescriber’s lack of immediate access to a computer or device from which to initiate this web access can create delays. We agree that the prescriber “may not have immediate access to the system if not on site at the nursing facility”, and that “[w]aiting for the prescriber to transmit controlled substance prescriptions electronically for new admissions could create delays in initiating urgent medication therapy because a prescriber could be required to log in to the electronic health record or other health IT system to enter a complete and compliant prescription” (85 Fed. Reg. at 47156).

Another challenge occurs when a prescriber is caring for residents in multiple LTCFs. Often this will necessitate the prescriber having to maintain different EHR system access and EPCS credentials for each LTCF. This may also create confusion and medication therapy delays.

#### *Electronic Prescription is Sent Directly from the Prescriber’s E-Prescribing System*

Another common occurrence is that many prescribers’ electronic prescription transmissions are sent directly to the pharmacy for the prescriber’s e-prescribing system, thus bypassing the LTCF’s EHR. This places facility personnel temporarily out of the communication loop, which can create confusion and extra phone calls to track down the medication order, all of which leads to potential delays in initiating medication therapy. Because the same order must be separately entered into two systems, it increases the opportunity for orders to not match, leading to medication errors.

It should also be noted that, for non-controlled substances, the prescriber will often communicate an order to the LTCF’s nurse via a non-electronic means. The LTCF’s nurse will then enter the order into the facility’s EHR system and cause an electronic prescription to be transmitted to the pharmacy. While this process flow lessens the need for a three-party communication, it is not an option for controlled substance prescribing. The Drug Enforcement Administration (DEA) states in their 2010 **Electronic Prescriptions for Controlled Substances Final Rule** that “whether in the LTCF setting or otherwise, nurses may not be given access to, or use, the practitioner’s two-factor authentication credential to sign electronic prescriptions for controlled substances” (75 Fed. Reg. at 16257).

Given the EPCS challenges noted above, **ASCP urges CMS to issue a waiver to the SUPPORT Act Section 2003 electronic prescribing requirement for LTC residents until such time that the operational implementation issues noted above are resolved.**

Section 2003 of the SUPPORT Act allows CMS to specify when the EPCS requirement may be waived. The statute specifically mentions when a controlled substance is prescribed for an individual who is a “dual eligible” (meaning they are both eligible for Medicare and Medicaid) residing in a nursing facility. It is unclear why congress limited this waiver to only dual resident LTC residents. All LTC residents have the same medication needs and the three-party communication challenges discussed above are common to all LTC residents. For that reason, ASCP urges CMS to adopt a broader waiver for all LTC residents regardless of their dual eligibility status.

### **Opioid Abuse Potential in the LTC Population**

The SUPPORT Act is intended to reduce controlled substance abuse and diversion. Considering the closed nature of the LTC medication distribution system, and the current extensive requirements on LTC pharmacies and facilities related to management of controlled substances, a waiver of the SUPPORT Act’s EPCS mandate for the LTC resident population will not have an adverse impact on the Act’s intent.

Thank you for your attention to our concerns. We stand ready to work with CMS and other stakeholders to reduce the obstacles and increase the adoption of EPCS in LTC settings. If you have any questions or require additional information, please contact Veronica Charles, ASCP’s Director of Policy and Advocacy at [vcharles@ascp.com](mailto:vcharles@ascp.com).

Sincerely,



**Arnold Clayman, PD, FASCP**

Vice-President of Pharmacy Practice & Government Affairs  
American Society of Consultant Pharmacists

