



230 E. Ohio Street, Suite 500  
Chicago, IL 60611-3269

Tel 312 664 4467  
Fax 312 664 6143

[www.himss.org](http://www.himss.org)

August 31, 2007

Herb Kuhn, M.D.  
Acting Deputy Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

Dear Dr. Kuhn:

The Healthcare Information and Management Systems Society (HIMSS) is pleased to submit our comments regarding the CMS' Proposed Rule "*Medicare Program; Proposed Revisions to Payment Policies Under the Physician Fee Schedule, and Other Part B Payment Policies for CY 2008; Proposed Revisions to the Payment Policies of Ambulance Services Under the Ambulance Fee Schedule for CY 2008; and the Proposed Elimination of the E-Prescribing Exemption for Computer-Generated Facsimile Transmissions.*" **CMS Reference Number: CMS-1385-P posted on July 12, 2007**). For the purpose of our response, we will be directing our comments changes to the **PROPOSED ELIMINATION OF EXEMPTION FOR COMPUTER GENERATED FACSIMILES**.

HIMSS is the healthcare industry's only membership organization exclusively focused on providing leadership for the optimal use of healthcare information technology and management systems for the betterment of healthcare. HIMSS represents more than 20,000 individual, 300 corporate members, and 47 chapters nationwide. HIMSS seeks to shape healthcare public policy and industry practices through its educational, professional development, and advocacy initiatives designed to promote information and management systems' contribution to quality patient care.

As you are well aware, HIMSS has responded to several CMS requests for public comment on E-Prescribing. HIMSS has leveraged the subject matter expertise of the members of our E-Prescribing Work Group and the Electronic Health Record Vendor Association, and recently incorporated input from our Life Sciences Roundtable to ensure that our response reflects the broadest level of industry experience. The viewpoints of these groups, along with their industry colleagues, ensure that HIMSS fulfills its requirement to offer a coordinated voice to the national discussion on these important healthcare issues. We are also aware that HIMSS member organizations, such as SureScripts, and RxHUB are submitting responses, and suggest that their unique perspectives should be considered in the promulgation of the final rule.

HIMSS appreciates CMS' effort to initiate steps to increase provider implementation of electronic healthcare solutions, and commends the department's interest in eliminating the "exemption [for] computer-generated facsimiles from strict adherence to the NCPDP SCRIPT Standard for communication of prescription or certain prescription-related information between prescribers and dispensers" in Section 423.160(a)(3)(i) of the November 2005 final rule (70 FR 67571). As an organization, we are committed to supporting the development and distribution of information and management systems, across the healthcare continuum, to achieve greater patient safety, improved office efficiency, better quality of care, and more cost effective care delivery. E- Prescribing and the broader adoption of Electronic Health Records foster an environment where these improvements can be maximized.

The current landscape provides a broad number of challenges for clinician and pharmacies, including a widespread need for contingency planning; uncertainty on incentives and reimbursements for clinicians employing HIT solutions; and the potential impact on providers and pharmacies. Recognizing these challenges

and necessary solutions are still being developed, HIMSS and our members recommend that CMS delay the elimination of the exception, allowing the future action to include the following components:

- **Implement all required changes for E-Prescribing on a schedule under one final rule:** HIMSS members are concerned that providers and pharmacies will be confused by the elimination of the exemption for computer-generated facsimiles just months prior to the overarching changes to E-Prescribing requirements from the Medicare Modernization Act of 2003 that must be promulgated by April 2009.
- **HIMSS recommends a consolidated rule that adheres to the April 2009 deadline, allowing time for implementation and testing to occur:** When the timeline is complete, HIMSS members suggest CMS consider an implementation period of 6-12 months before the exemption is eliminated.
- **Allow for fax prescriptions as a fail over measure in the event of network requirements or failure.** This will ensure the timeliness of medication dispensing especially at the community level.

The following sections support HIMSS observations:

### **Potential Impact on Providers and Pharmacies**

Like our industry colleagues, HIMSS members are concerned about the impact of eliminating the exception for computer-generated faxes that occur under two scenarios – for clinicians who have E-Prescribing capabilities, and for clinicians who use more limited technologies. First, for clinicians who have adopted HIT solutions to include EHRs and E-Prescribing capabilities, HIMSS concurs that the 15-20% implementation rate referenced in the proposed rule is unacceptable, particularly when a provider already possesses solutions that are NCPDP SCRIPT compatible. Our members relate experiences in which they or their customers have not, in fact, maximized their HIT solutions. We are encouraging our members to raise their levels of implementation, with the goal of 100% utilization of the system. We caution CMS that the out-of-pocket expenses for seemingly simple upgrades, or for “turning on” existing capabilities, may prohibit some providers from advancing their implementation levels; and an abrupt change in the requirement may cause some providers to revert to paper-based solutions. Given the patient safety and healthcare quality concerns related to the paper-based prescription, we suggest CMS work with HIMSS and our industry colleagues to ensure that we minimize the likelihood of such backward steps. In addition, upgrades often require IT resources at the practice end that they might need to pay additional costs to implement. In addition, even if office-level resources are available, time needs to be allocated in order for an organization to test, retest, migrate, and mitigate change.

E Prescribing initiatives are not simply a matter of turning on a module at a particular computer and utilizing the software with the touch of a mouse. The key to effective automated prescribing habits begins with a well thought through workflow analysis in the provider site that is completed before the automation is installed. The costs and time involved in implementing this key step can easily be half or more of the cost of any e-prescribing installation. Further more, when e-prescribing alternatives are provided at no cost, the significant effort (and cost) involved in the reengineering still remains. We strongly encourage CMS to adopt an implementation process that takes these important workflow changes into consideration and allows for sufficient time to identify and cover the cost involved, and to ensure successful implementation of this technology.

Second, HIMSS has the most concern over eliminating the exemption for computer-generated faxes, for clinicians and pharmacies that use more limited technologies. HIMSS members are concerned that CMS’ attempt to foster adoption of E-Prescribing will widen a capability gap for providers who have not begun using NCPDP SCRIPT compatible equipment. We are vocal supporters of increasing adoption and implementation rates for HIT solutions; however, this requirement could create an unnecessary burden on providers who have not yet adopted more advanced HIT solutions. If in fact this were to result in a slowing of HIT adoption rates, the associated risks to patient safety and the quality of healthcare delivery would persist. In this regard, HIMSS members believe that the final specification for any E-Prescribing system should incorporate fax fail over capability as a necessary back-up to SCRIPT. HIMSS expects that future efforts to certify E-Prescribing systems, such as the kind performed by the Certification Commission for Healthcare Information Technology (CCHIT), will recognize fax fail over as a necessary requirement. Thus, for CMS to eliminate electronic faxing now would be counterproductive.

### **Contingency Planning**

HIMSS encourages CMS to permit provider offices and pharmacies to develop contingency plans for circumstances that would require the office to revert to computer-generated faxing. As we are reminded every day, even with the best of systems in place, situations may arise that will preclude providers and pharmacists from using E-Prescribing capabilities. Addressing these circumstances in the final rule, and affording providers and pharmacies the opportunity to develop achievable alternative solutions, will foster practical and effective clinical and business processes.

### **Varying Federal and State Requirements**

HIMSS members have become increasingly concerned about the inconsistencies from state to state regarding if or how E-Prescriptions can be utilized. While HIMSS is encouraged by the recent announcement of the passage of Electronic Prescription transmission provisions in all 50 states, HIMSS members remain concerned about wide-ranging inconsistencies in E-Prescribing rules, formats, and processes that exist between states and also within states. The laws and regulations that govern prescriptions, such as requirements for handwritten signatures in certain cases, often conflict with E-Prescribing enabling rules. Even within a given state, prescription requirements may differ depending on the payor involved. These inconsistencies create a confusing environment which is burdensome to providers, pharmacists, and ultimately, patients. HIMSS encourages CMS to leverage its relationship with the states, through Medicaid and other state-based programs, to develop a common framework for E-Prescribing overall, including electronic authorization. Providers and pharmacists need an E-Prescribing process that incorporates common parameters. HIMSS members believe that if states were to adopt laws that would enable E-Prescribing standards, such as electronic signature as a replacement for handwritten signature, the ultimate benefit would outweigh the burden of change for all parties.

More specifically, CMS's proposed rule cites the statistic that only 20 percent of independent pharmacies are capable of sending and receiving SCRIPT transactions. HIMSS' members believe that an important reason for the slow rate of adoption is directly related to costs. While readiness for connectivity may in fact be widespread, readiness for implementation is much less prevalent, especially for small, non-chain pharmacies. The costs of installing and implementing e-prescribing are significant: software must be purchased, software upgrades will be needed, and transaction fees will apply. Also significant are the costs associated with making the necessary changes to workflow and resource deployment within the pharmacy organization. HIMSS members suspect that these cost burdens may account for the lower adoption rate among small pharmacies. In fact, if small pharmacies lost their ability to receive electronically-faxed prescriptions, they would be at a disadvantage when competing for business. The current electronic fax exception allows patients and providers to work together to select from a wider range of available pharmacies. While HIMSS supports the eventual full adoption of E-Prescribing capabilities in all pharmacies, large and small, it would be counterproductive, to change the rule at this point in time.

### **Incentives:**

HIMSS also encourages CMS to address the issue of incentives to participate in the E-Prescribing program. As we mentioned in our comments to CMS prior to the adoption of the current final rule, a number of organizations within the healthcare continuum will participate based on community empowerment and federal regulation. However, HIMSS anticipates that a significant number of providers and organizations will not participate until they receive adequate reimbursement through implementation funding, deferential reimbursement, or pay-for-performance. In keeping with the HIMSS mandate for providing practical solutions for our membership and industry, HIMSS members on the Ambulatory Information Systems Steering Committee have developed a user-friendly white paper, entitled, "Stand-Alone E-Prescribing: Ready or Not?," to assist providers as they prepare for E-Prescribing. As ambulatory care providers with an affinity for information technology solutions, the group provides a unique perspective of the issues surrounding E-Prescribing. HIMSS encourages CMS to consider this document and supportive information before developing the final rule, as it pertains to the exemption.

### **Controlled Substances**

Finally, HIMSS and our members are concerned that the federal government has not reached a conclusion on the matter of the Electronic Prescribing of controlled substances. Our members have been instrumental in providing insight into the discussions between the various federal agencies and the healthcare industry. While we understand that technology solutions exist that can address the Drug Enforcement Agency's (DEA) concerns

about provider authentication; we are concerned that all details in this regard have not been addressed. HIMSS and our members encourage CMS to continue working with other DHHS agencies and the DEA to develop procedures that and capitalize on HIT (to include NCPDP fill-status requirements) and the subsequent improvements in supply tracking and drug dispensing patterns that Electronic Prescribing enables. HIMSS looks forward to continuing this dialogue throughout the year.

**Conclusion:**

In conclusion, HIMSS and our members are encouraged by CMS' interest in eliminating the exception for computer-generated facsimiles. The benefits associated with E-Prescribing and broader HIT solutions for patients, clinicians, and the overall healthcare system are well documented. HIMSS looks forward to increased adoption rates and a time in the very near future when we will have reached a critical mass of providers and pharmacies that can exchange electronic prescriptions. Given the current state of HIT adoption in the provider community, HIMSS strongly encourages CMS to take into account all the aforementioned factors before eliminating the exemption for computer-generated facsimiles of prescriptions. HIMSS asks CMS to incorporate the following recommendations into the final rule:

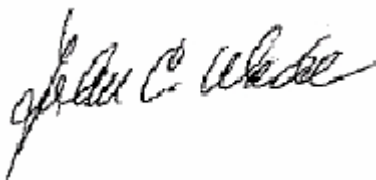
- **Implement all required changes for E-Prescribing on a schedule under one final rule**
- **Promulgate a consolidated rule that adheres to the April 2009 deadline, allowing time for implementation and testing to occur.**
- **Allow for fax prescriptions as a fail over measure in the event of network requirements or failure.**

HIMSS and our members support the advancement of E-Prescribing and applaud CMS efforts to expand the use of more effective technologies. If you have any additional questions please contact Mr. Thomas M. Leary, Senior Director, Federal Affairs, [tleary@himss.org](mailto:tleary@himss.org), or 703.562.8814.

Sincerely,



H. Stephen Lieber, CAE  
HIMSS President & CEO



John Wade, FCHIME, FHIMSS  
VP, Executive Director KC REE, and Former CIO,  
Saint Luke's Health System  
HIMSS Chairman of the Board

