



on
S. 2408/H.R. 4296
Medicare Electronic Medication and Safety Protection
(E-MEDS) Act of 2007

Call To Action:

On December 5, 2007, Senator John Kerry (D-MA) and John Ensign (R-NV) introduced S. 2408, the Medicare Electronic Medication and Safety Protection (E-MEDS) Act of 2007, that they hope will expedite the adoption of electronic prescribing technology in every doctor's office in America. A companion piece of legislation has been introduced in the House (H.R. 4296) which is being co-sponsored by Representatives Allyson Schwartz (D-PA) and Jon Porter (R-NV). This bipartisan, bicameral legislation encourages physicians to use e-prescribing in Medicare by providing a one-time payment bonus to physicians for the initial cost of purchasing e-prescribing technology. The bill also provides an extra 1% percent bonus for the administrative costs attached to every Medicare prescription a doctor writes electronically. In order to ensure widespread adoption of e-prescribing, the bill also establishes financial penalties for Medicare physicians who do not begin using e-prescribing by 2011.

Specifically, the bill would:

1. Provide permanent Medicare funding for one-time grants to physicians to help offset the start-up costs paid by physicians to acquire and implement e-prescribing technology.
2. Provide permanent Medicare funding for payment bonuses to physicians for use of e-prescribing. For every Medicare prescription that is written electronically, physicians would be paid an extra 1% bonus.
3. Starting on Jan 1, 2011, physicians would be required to write their Medicare outpatient prescriptions electronically. Physicians that continue to write prescriptions by hand would face a per-claim financial penalty.
4. The Secretary of HHS would be given authority to grant one- or two-year hardship waivers for physicians who face particular difficulties in acquiring and implementing e-prescribing; especially those from rural areas or very small (or solo) practices.
5. The Government Accountability Office and Centers for Medicare and Medicaid Services would be directed to report within two years on the status of e-prescribing adoption within Medicare.

Closing Remarks

S. 2408 has been introduced in the U.S. Senate, read twice and referred to the Senate Finance Committee where it is waiting to be heard. In the U.S. House, H.R. 4296 has been referred to the Ways & Means Committee and the Energy & Commerce Committee. HIMSS has heard that the Congressional Budget Office is scoring this legislation as a savings (around \$3 billion) rather than cost. HIMSS believes that this is the first time that the CBO has scored HIT legislation as a savings, instead of a cost. Health and Human Services Secretary Michael Leavitt has said that the Administration would support this e-prescribing legislation if passed by Congress. It is anticipated that this legislation will be tacked onto another piece of must pass legislation and will not be passed as a stand-alone piece of legislation. HIMSS has reviewed this legislation extensively and worked with its diverse stakeholders to understand the implications of this legislation. With only about 9% of physicians actually using this technology, HIMSS position is to **endorse this legislation if amended** to help advance the use of electronic prescribing as one first step in the overall transformation of healthcare using information technology. HIMSS will continue to work with congressional leaders on this legislation and if passed worked with the Department of Health and Human Services to address minor regulatory issues raised by our members. These issues include, but are not limited to:

- Providing bonuses/incentives pharmacists
- Encouraging DEA to permit electronic prescribing for controlled substances
- Reviewing the amount of on-going reimbursements
- Ensuring that this action of utilizing electronic prescribing is only one of many steps needed to transform healthcare using information technology

Questions on this position statement should be addressed to Dave Roberts, FHIMSS, HIMSS Vice President for Government Relations, at 703.562.8811 or via email at droberts@himss.org.

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**Medicare Electronic Medication and Safety Protection (E-MEDS) Act of 2007
(Introduced in Senate) – Companion Bill in U.S. House is H.R. 4296**

S 2408 IS

110th CONGRESS
1st Session
S. 2408

To amend title XVIII of the Social Security Act to require physician utilization of the Medicare electronic prescription drug program.

IN THE SENATE OF THE UNITED STATES

December 5, 2007

Mr. KERRY (for himself, Mr. ENSIGN, Ms. STABENOW, and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to require physician utilization of the Medicare electronic prescription drug program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Medicare Electronic Medication and Safety Protection (E-MEDS) Act of 2007'.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) Patient safety is an important issue and a priority among patients, providers, insurers, businesses, and government entities alike.
- (2) Adverse drug events are defined by the Institute of Medicine as 'any injury due to medication'.
- (3) According to the Institute of Medicine, more than 1.5 million preventable adverse drug events occur every year in the United States.

- (4) Studies indicate that at least 530,000 preventable adverse drug events occur each year among the Medicare population, and cost the Federal Government upwards of \$887,000,000, or \$1,983 per person.
- (5) Electronic prescription drug programs, or e-prescribing, provide for the electronic transmittal of prescription information from the prescribing health care provider to the dispensing pharmacy and pharmacist.
- (6) Electronic prescribing provides formulary and coverage information before a prescription is written to better inform the patient and prescriber of lower cost options, including generics.
- (7) E-prescribing can help to eliminate medical errors, injuries, hospitalizations, and even death that can result from illegible prescriptions and bad drug interactions, in addition to reducing patient medication non-adherence.
- (8) The Institute of Medicine recommends that all physicians create a plan to implement and use e-prescribing technology by 2010.

SEC. 3. INCENTIVES FOR USE OF E-PRESCRIBING UNDER MEDICARE.

- (a) Bonus Payments- Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:
 - ^ (v) Incentive Payments for Physician Use of E-Prescribing-
 - ^ (1) ONE-TIME BONUS FOR START-UP COSTS-
 - ^ (A) IN GENERAL- If the Secretary determines, based upon coding in claims submitted under this part over a duration specified by the Secretary, that a physician meets a threshold volume or proportion (as specified by the Secretary) of claims for physicians' services for individuals enrolled under this part that--
 - ^ (i) are classified (under section 1848) as evaluation and management services;
 - ^ (ii) include the making of a prescription that could under law be made using the electronic prescription drug program; and
 - ^ (iii) use the electronic prescription drug program for such prescription,the Secretary shall make a payment to the physician, in addition to any other payment under this part, of the amount specified in subparagraph (B). Not more than one payment may be made under this subsection with respect to any physician.
 - ^ (B) AMOUNT- The payment amount under subparagraph (A) shall be, in the case of a physician that meets the conditions of subparagraph (A) for a period that begins during--
 - ^ (i) 2008 or 2009, \$2,000;
 - ^ (ii) 2010 or 2011, \$1,500; or
 - ^ (iii) 2012 or a subsequent year, \$1,000.

Position Statement on E-MEDS Legislation

^ (2) ON-GOING BONUS FOR USE OF E-PRESCRIBING-

^ (A) IN GENERAL- If the Secretary determines, based upon coding in claims submitted under this part over a period specified by the Secretary, that a physician uses the electronic prescription drug program for prescribing at least a threshold volume or proportion (as specified by the Secretary) of claims for physicians' services for individuals enrolled under this part, in addition to the amount of payment that would otherwise be made under this part for physicians' services by the physician that are classified as evaluation and management services under section 1848, there also shall be paid to the physician an amount equal to 1 percent of the allowed charges for such services. In applying the previous sentence, there shall not be taken into account claims for prescriptions written for controlled substances which may not under law be prescribed using the electronic prescription drug program.

^ (B) APPLICATION TO PHYSICIAN SHORTAGE BONUSES- The additional payment under this paragraph shall be taken into account in applying subsections (m) and (u).

^ (3) AUDITING- Provisions applicable to the auditing of claims for payment and enforcement of false claims under this part shall apply to claims for payment under this subsection.

^ (4) ELECTRONIC PRESCRIPTION DRUG PROGRAM DEFINED- In this subsection, the term "electronic prescription drug program" means the program established under section 1860D-4(e).'

(b) Requirement for Use of E-Prescribing- Section 1848(a) of such Act (42 U.S.C. 1395w-8(a)) is amended by adding at the end the following new paragraph:

^ (5) ADJUSTMENT IN FEE SCHEDULE FOR FAILURE TO USE E-PRESCRIBING-

^ (A) IN GENERAL- Subject to subparagraph (B), effective for physicians' services furnished on or after January 1, 2011, in the case of such services--

^ (i) that are classified as evaluation and management services under this section; and

^ (ii) in connection with which there was one or more prescriptions made that could have been made, but were not all made, under the electronic prescription drug program,

the fee schedule amount otherwise applicable under this section shall be reduced by 10 percent.

^ (B) WAIVER- The Secretary may waive the application of subparagraph (A) until January 1, 2012, or January 1, 2013, as specified by the Secretary, in cases of demonstrated hardship or unforeseen circumstances specified by the Secretary.'

SEC. 4. REPORTS ON E-PRESCRIBING.

(a) CMS Report-

(1) IN GENERAL- Not later than 2 years after the date of the enactment of this Act, the Administrator of the Centers for Medicare & Medicaid Services shall submit to Congress a report on progress on implementing e-prescribing under the Medicare electronic prescription drug program under section 1860D-4(e) of the Social Security Act (42 U.S.C. 1395w-104(e)).

(2) ITEMS INCLUDED- Such report shall include information on--

(A) the percentage of Medicare physicians that utilize the electronic prescription drug program;

(B) the estimated savings resulting from the use of e-prescribing; and

(C) progress on reducing avoidable medical errors resulting from the use of e-prescribing.

(b) GAO Report-

(1) IN GENERAL- Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the impact of implementation of such program on physicians.

(2) ITEMS INCLUDED- Such report shall include information on--

(A) factors influencing the adopting of e-prescribing by physicians; and

(B) the impact of this Act on physicians practicing in individual or small group practices and on physicians practicing in rural areas.