

Electronic Prescriptions for Controlled Substances – EPCS – Delay in Implementation for Enforcement

Enacted in Arkansas as part of Act 447 of 2019 and part of the federal HHS rules as part of the Medicare Physician Fee Schedule

Two Quick Important Review Points

1. Implementation date was set as either:
*“This act is effective on and after the later of:
(1) January 1, 2021; or
(2) The certification by the Attorney General that the United States Department of Health and Human Services requires mandatory electronic prescribing.”*
2. There is also a carve out for pharmacists so that if we see prescriptions that are not EPCS then we do not have to go back and establish the fact that the prescriber met one of the exemption criteria. That is the Prescriber’s responsibility not the Pharmacist or Pharmacy’s responsibility. While I have heard frustration from prescribers thinking that pharmacies got an exemption I have mentioned many times that pharmacy as a whole is prepared for EPCS and that we even have trouble finding community pharmacies, “retail permits”, that are not fully functional for EPCS.

ACT 447 of 2019 language - “(e)(1) A pharmacist or pharmacy that receives a written, oral, or faxed prescription for a controlled substance included in Schedule I through Schedule VI is not required to verify that the prescription properly falls under one (1) of the exceptions listed in subsection (d) of this section.

(2) A pharmacist may continue to dispense a controlled substance from an otherwise valid written, oral, or faxed prescription that is consistent with state law or rules or federal law and regulations.”

DELAY IN EPCS

On December 1, 2020, CMS released the fact sheet linked below with the excerpt related to EPCS. While the rule will have a compliance date of 1/1/2021, CMS set an enforcement date of 1/1/2022 which essentially delays the required implementation date for enforcement purposes for an additional year.

<https://www.cms.gov/newsroom/fact-sheets/final-policy-payment-and-quality-provisions-changes-medicare-physician-fee-schedule-calendar-year-1>

Section 2003 of the Support Act

Section 2003 of the SUPPORT Act requires that, effective January 1, 2021, the prescribing of a Schedule II, III, IV, or V controlled substance under Medicare Part D be done electronically in accordance with an electronic prescription drug program, subject to any exceptions, which HHS may specify. To help inform CMS's implementation of section 2003, we issued a Request for Information entitled "Medicare Program: Electronic Prescribing for Controlled Substances; Request for Information," as a separate document on July 30, available [here](#). The RFI solicited stakeholder feedback on whether CMS should include exceptions to the electronic prescribing of controlled substances (EPCS) requirement and under what circumstances and whether CMS should impose penalties for noncompliance with the EPCS mandate. We will use this public feedback to draft separate rules to further implement this SUPPORT Act provision in future rulemaking.

To help ensure that section 2003 of the SUPPORT Act is implemented smoothly and with minimal burden to prescribers, in this CY 2021 PFS final rule we are finalizing that prescribers be required to use the National Council for Prescription Drug Programs, (NCPDP) SCRIPT 2017071 standard for EPCS prescription transmissions, the same standard which Part D plans are already required to support. We proposed implementation of the EPCS mandate effective January 1, 2022 but based on comments received, are finalizing the provision with an effective date of January 1, 2021 and a compliance date of January 1, 2022 to encourage prescribers to implement EPCS as soon as possible, while helping ensure that our compliance process is conducted thoughtfully

CALL TO ACTION FOR PRESCRIBERS – MANDATORY EPCS ENFORCEMENT DATE 1/1/2022

Prescribers originally were required to submit EPCS for a projected date of 1/1/2021 by section 2003 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act). This would require 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 also provided CMS with the authority to enforce and specify appropriate penalties for noncompliance with the requirement for electronic prescribing of controlled substances (EPCS). The SUPPORT Act required CMS to specify, through rulemaking, circumstances and processes by which it may waive the EPCS requirement.

Arkansas Act 447 of 2019 further clarified that in Arkansas that EPCS would be required for prescribers on the date of 1/1/2021 or the certification date that EPCS would be required by HHS federally.

It is important to note that there seems to be a disconnect between the date of intent for 1/1/2021 and the preparedness of prescribers to meet that date. Now that the date has a 1 year delay in enforcement federally, prescribers have been given another year to

get this set up and should do so as quickly as they can in order to meet criteria for 1/1/2022 or face potential state and federal action as provided for in the federal and state rules and law.