



March 6, 2024

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Submitted via email

Re: Immediate Action & Support Needed to Mitigate Change Healthcare Disruptions & Promote Continuity of Care for Medicare and Medicaid Beneficiaries

Secretary Becerra and Administrator Brooks-LaSure:

The National Association of Chain Drug Stores (NACDS) writes to urge your immediate action to mitigate healthcare disruptions stemming from the recent apparent cyberattack on Change Healthcare. Pharmacies remain fully committed to promoting uninterrupted access to care for the patients and communities they serve nationwide. NACDS strongly and respectfully requests your collaboration and partnership in addressing this critical issue to help preserve essential access to healthcare for the American people.

Feedback from our pharmacy membership indicates pharmacies across the country have been significantly and negatively impacted by the disruption caused by the cyberattack on Change Healthcare, and NACDS is deeply concerned about reports that may inaccurately minimize pharmacy and patient impacts of this incident. Since disruptions were first encountered, pharmacies have continued to work tirelessly to mitigate delays and interruptions for their patients, implementing high-burden and unsustainable workarounds with very limited guidance from impacted health plans and without any indication of the estimated duration of this disruption. Additional details describing some of the operational challenges pharmacies face in implementing these workarounds are provided on the next page of this letter.

NACDS urges HHS and CMS to work with pharmacies and other healthcare entities to help mitigate both immediate and long-term impacts to patients, including risks presented by similar future incidents. **In the immediate term, NACDS urges for:**

1. **Pharmacy Guidance on Delayed Billing of Prescription Claims & Estimated Timeline of Outage:** CMS should publish specific and clear guidance for pharmacies on the delayed billing of prescription claims to Medicare and Medicaid plans impacted by the Change Healthcare cyberattack. CMS should also waive any existing penalties, extraneous requirements, or deadlines to reasonably support pharmacies' delayed billing of claims given the current extreme and uncontrollable circumstances. CMS should also encourage commercial plans and their Pharmacy Benefit Managers (PBMs) impacted by the Change Healthcare cyberattack to issue specific, clear, and reasonable guidance for pharmacies on the delayed billing of claims.

HHS and CMS should also work closely with Change Healthcare to better estimate timelines for the resolution of this disruption to support the necessary planning of pharmacies and other healthcare providers to alleviate impacts.

2. **Mitigation of Harmful PBM Restrictions & Undue Requirements:** HHS and CMS should work closely with all Pharmacy Benefit Managers (PBMs) impacted by the Change Healthcare disruption to strongly encourage PBMs to act in good faith on claims affected by the current incident as an important means of preserving patient access to care. Based on feedback from our membership, pharmacies are continuing to see billing rejections (e.g., refill too soon, prior authorization required), demonstrating that some PBMs impacted are not acting in good faith to support patient access and claims processing during the current incident, disregarding the lack of system functionality during the outage, and worsening challenges for patients and pharmacies during this already difficult time. Also, HHS and CMS should urge PBMs to take a reasonable approach to claims review by exempting claims from auditing during the impacted time period of this incident. Additionally, HHS and CMS should seek to ensure that impacted PBMs do not attempt to seek monetary compensation for their financial impact of this incident in the form of fees, reimbursement concessions, or any other form of financial adjustment imposed on pharmacies.
3. **Support for Pharmacies & Health Plan Programs Partnering with Alternate Prescription Processors:** HHS and CMS should work with Change Healthcare and other prescription processing companies to mitigate any friction or unnecessary burden for pharmacies to partner with multiple, or different, prescription processing companies as a means of mitigating the current disruption, and potential future disruptions caused by similar incidents. For example, pharmacies who may elect to switch clearinghouses must manually update their new clearinghouse information individually for each pharmacy store in the Provider, Enrollment, Chain, and Ownership System (PECOS), which is tremendously burdensome. NACDS urges CMS to implement more efficient processes for pharmacies to update any clearinghouse changes across all pharmacy locations in mass. Additionally, HHS and CMS should seek to proactively mitigate instances when health plan programs are exclusive to only one prescription processor. As demonstrated by the current incident, scenarios when the sole prescription processor is compromised for a certain program are especially disruptive, as no other mechanism exists for billing and reimbursement. Key consideration should be made to support alternate claims processing especially for the following programs: Medicaid Fee-For-Service, manufacturer cash discount cards and Patient Assistance Programs, Medicare Part B prescription claims, including diabetes supplies, major medical plans, and workers' compensation insurance.
4. **Exploring Emergency Solutions, Tools, and Policy Levers to Mitigate Pharmacy Impacts:** HHS and CMS should work with pharmacies and other healthcare providers and states to explore and ultimately implement solutions to mitigate both immediate impacts of the current disruption and better prepare to mitigate impacts of potential future incidents. This work should include consideration of tools or programs that minimize risk and harm to pharmacies and other healthcare entities during such disruptions where claims processing is interrupted. For example, a tool such as the Emergency Prescription Assistance Program (EPAP), that may allow pharmacies to temporarily bill for prescriptions for a subset of impacted patients and health plans, is an important concept to explore. Additionally, in circumstances where processing of Medicare Part B claims are disrupted, temporary billing to Medicare Part D, if feasible, should be considered by CMS.

Also, NACDS is supportive of emergency funding that is reportedly under consideration by the National Security Council (NSC) to help support some relief for pharmacies and other healthcare providers who are working to maintain access to care for their patients, despite these ongoing disruptions. As evidenced in previous emergency circumstances, providing timely relief allowed providers to effectively develop contingency plans to maintain uninterrupted operations and patient care. NACDS sincerely requests the opportunity to be included in ongoing conversations with the NSC, HHS, and with other healthcare providers to discuss solutions that meaningfully support the ability for pharmacies and other healthcare providers to continue serving their patients amid the ongoing disruption.

5. **Addressing Potential HIPAA Breaches:** HHS should work closely with Change Healthcare to address any potential or actual HIPAA breaches that result from this incident, including all required patient, media, and government notifications and the filing of any required breach reports. Also, HHS should ensure Change Healthcare discloses to its pharmacy partners how it will address potential or actual HIPAA breaches resulting from this incident as soon as possible.

Operational Challenges in Implementing Alternate Claims Processing and Holding Transactions

Pharmacies continue working around the clock to mitigate impacts for their patients. However, it is important for HHS and CMS to understand some of the key challenges that make current pharmacy workarounds challenging and unsustainable. Generally, pharmacies have two primary pathways to mitigate interruptions from the current incident. The first is to implement an alternate process for prescription claims processing, which requires tremendous time, effort, and costs. The process to implement alternate claims processing is arduous, and is not conducive to addressing emergent outages or disruptions. Further, the significant lift for pharmacies to implement alternate claims processing without a clear timeline for resolution of this disruption puts pharmacies and other healthcare providers in a difficult position.

Further, the alternate option for pharmacies, and other healthcare providers, to mitigate disruptions is to manually hold transactions for billing at a later date once the disruption has been resolved. This pathway also places pharmacies in an untenable position, taking on financial risk for prescriptions being dispensed without a reliable mechanism to be compensated for those products and dispensing services. Additionally, pharmacies have received limited guidance from impacted health plans on how to implement the holding of transactions for billing at a later date, making it even more challenging for pharmacies to navigate current disruptions.

NACDS looks forward to partnering with HHS, CMS, states, and other key stakeholders to support uninterrupted access to care for the American people during this immediate incident and to better prepare for future challenges. We greatly appreciate the opportunity to inform HHS' and CMS' timely action on this critically important issue. For questions or further discussion, please contact NACDS.

Sincerely,



Steven C. Anderson, FASAE, CAE, IOM
President and Chief Executive Officer
National Association of Chain Drug Stores

Cc:
Jon Blum, CMS
Will Harris, CMS

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NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate over 40,000 pharmacies, and NACDS' member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 900 supplier partners and over 70 international members representing 21 countries. Please visit NACDS.org.