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July 25, 2011

Donald Berwick, MD
Administrator, Centers for Medicare and Medicaid Services
Department of Health and Human Services
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Attention: CMS-9993-IFC2

Dear Dr. Berwick:

Express Scripts Inc. appreciates the opportunity to submit comments on the amendments to interim final rules for "Group Health Plans and Health Insurance Issuers: Rules Relating to Internal Claims and Appeals and External Review Processes," published in the Federal Register on June 24, 2011. Express Scripts is one of the largest pharmacy benefit management (PBM) companies in North America, providing PBM services to over 60 million patients. We serve thousands of client groups, including managed-care organizations, insurance carriers, third-party administrators, employers and union-sponsored benefit plans. Express Scripts is headquartered in St. Louis, Missouri.

Express Scripts appreciates the modifications that the Departments of Treasury, Labor, and Health and Human Services have made to the interim final rules published on July 23, 2010. We believe these changes will facilitate compliance without sacrificing beneficiary protections. We do have some continued concerns with the IFR and the amendment, and request that the Departments consider additional changes as outlined below. We are also members of the Pharmaceutical Care Management Association and incorporate their comments by reference.

Additional Notice Requirements for Internal Claims and Appeals

We appreciate that the Departments have modified the requirement to provide diagnosis and treatment codes pursuant to a determination of benefits only upon request. However, we strongly recommend the Departments modify this further in the case of prescription drug claims to include ***"when available."***

The information currently provided to patients with their determination of prescription drug benefits is more than adequate to inform beneficiaries with minimal risk of confusion. A typical

drug benefit notice provides a patient with the prescriber's name, the name of the drug, the reason for denial, the standard applied to the decision, the date of the request and the date of the decision. The diagnosis and treatment codes are neither necessary for the patient to identify the claim nor relevant for a subscriber to understand an internal claims and appeal process.

Moreover, diagnosis and treatment codes are almost never contained on a prescription pad or available when processing prescription drug claims in public and private health benefit plans. The drug claim will contain the information that the patient received the drug but not the reason that the physician prescribed it—some of which might be for off-label uses. The only way to obtain this information is to follow up after the fact with the physician. This will present a significant hassle factor for the physician and possibly the patient without yielding the beneficiary any meaningful, additional information.

There are some instances when a diagnosis or treatment code would be available on a prescription (e.g. when subject to prior authorization), and we would recommend that plan sponsors be required to provide only **those** codes upon request as they are readily available.

Form and Manner of Notice

The Departments request comments on whether it would be appropriate to include a provision in the final rules requiring health insurance issuers providing group health insurance coverage to provide language services in languages that do not meet the requisite threshold for an applicable non-English language, if requested by the administrator or sponsor of the group health plan to which the coverage relates. Express Scripts believes that plan sponsors should be able to request any language services they deem appropriate under the 10% threshold and that the terms and conditions of such requests are a matter of private contract between the plan and its insurers and other service providers. To extend beyond the 10% would shift the costs associated with implementing the lower threshold to all plan sponsors whether they desired that service or not.

In closing, we appreciate the opportunity to share our views with you. Successful implementation of the Affordable Care Act is of utmost importance to Express Scripts.

Sincerely,

Mary M. Rosado

Mary Rosado
Vice President, Federal Government Affairs