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Cc: [Malcolm J. Broussard](#); [Uhrig, Paul](#)
Subject: Surescripts Comments On Legislative Workgroup on E-prescribing Draft Report
Date: Wednesday, December 21, 2011 11:13:06 PM
Importance: High

Robert Marier, MD, MHA, FACP
Executive Director
Louisiana State Board of Medical Examiners

RE: Louisiana Legislative Workgroup on E-prescribing Draft Report, Dated 12-14-2011 [Pursuant to Senate Resolution 81(2011)]

Dear Dr. Marier:

As you might be aware, Surescripts operates the nation's largest health information network, and we support the most comprehensive infrastructure of healthcare organizations nationwide. Pharmacies, physicians, payers, pharmacy benefit managers, hospitals, health information exchanges, and health information technology (HIT) companies rely on Surescripts to more easily and securely share health information. By providing that information during emergencies and routine care, Surescripts is committed to saving lives, improving efficiency, and reducing the cost of healthcare for all. The vast majority of electronic prescription messages transmitted in the United States today flow through our network, and as of this past November, there were 3,983 prescribers and 944 pharmacies in Louisiana actively using our network to exchange such electronic messages.

We at Surescripts have reviewed the aforementioned draft report on e-prescribing, and we would like to take this opportunity to respectfully offer several comments and suggestions to you and the workgroup with respect to the report. First and foremost, we would like to commend the workgroup on the breadth and depth of issues analyzed in the report. You and your colleagues have done an excellent job analyzing and making recommendations with respect to some very complex issues.

In terms of our specific comments to the Background and Findings sections, we would like to share the following:

- Page 3, Section II) Background, A) Electronic Prescribing, 4):
"About 79 percent of prescribers used EMRs in 2010, up from 70 percent in 2009."

Surescripts comment: This statement was, in fact, made in the Surescripts 2010 Annual Progress report, but what the statement referred to was prescribers who were using e-prescribing. Thus, the statement should be: "About 79 percent of e-prescribers used EMRs in 2010, up from 70 percent in 2009." We apologize for the confusion.

- Page 4, Section II) Background, C) Regulatory Framework, first paragraph: “The federal government has proposed amending its rules governing controlled substances to permit e-prescribing.”

Surescripts comment: The federal government has amended its rules governing controlled substances to permit e-prescribing. The Electronic Prescriptions for Controlled Substances (EPCS) rule (21 CFR Parts 1300, 1304, 1306, and 1311) that the Drug Enforcement Administration published on March 31, 2010 was a final rule with comment, and the changes made in that rule became effective on June 1, 2010. Thus, insofar as the federal government is concerned, EPCS has been legal since June of 2010. Therefore, we would suggest altering this sentence to read: “The federal government has amended its rules governing controlled substances to permit e-prescribing.” (This said, you are correct to recognize that this final federal rule does not preempt state rules that are more restrictive than the DEA’s rules.)

- Page 5, Section III) Findings, A) e-Prescribing, 2) “These benefits however are associated with significant costs for the provider due to a) Lack of standardization with multiple systems/platforms in use.”

Surescripts comment: There are many types of standardization that come into play with HIT, such as technical communication standards, hardware standards, user-interface standards, workflow standards, etc. It would be very helpful to the industry for the workgroup to be more specific in terms of the type of e-prescribing standards it believes are lacking. If the workgroup is referring to technical communication standards for e-prescribing, we would share that there is a very high degree of standardization being used right now by the industry (in fact, the federal government has adopted e-prescribing standards for Medicare e-prescribing, and they have been used by the HIT industry for several years now. Please see: <http://law.justia.com/cfr/title42/42-2.0.1.2.23.4.52.5.html>). We will touch on this standardization issue again below.

- Page 6, Section III) Findings, A) e-Prescribing, 3) “There are also concerns about... b) Higher costs borne by the patient or insurer associated with the transaction or by means of the patient being directed to one or another pharmacy, or to a brand name when a generic or therapeutic equivalent costing less would have the same effect and c) Unfair competition by national and on line pharmacies to the disadvantage of local pharmacies and d) Conflicts of interest with pharmacy benefits managers or physicians directing or re directing prescriptions to pharmacies they own” (emphasis added).

Surescripts comment: Patient choice of pharmacy and physician choice of

medication are two of Surescripts' key guiding principles, which are reiterated for the record by the following statement made on page 2 of our 2010 National Progress Report (referenced in your report):

“Surescripts' commitment to collaborating with all healthcare participants to realize a neutral nationwide e-prescribing network—In addition to neutrality and collaboration, Surescripts' long-standing principles of transparency, open standards, protection of physician choice of therapy and patient choice of pharmacy, and privacy protection have created an ecosystem that enables the rapid growth of e-prescribing.”

We believe similar principles are also observed by the other smaller e-prescribing networks in operation in the U.S. today. While there may be concerns about activities such as are mentioned above among some practitioners, there is no evidence that we are aware of that such activities are actually taking place, and if there was, we would take immediate steps to eliminate said activities on our network.

- Page 6, Section III) Findings, A) e-Prescribing, 6) “There is general agreement that a) National standards/solutions are an essential next step.”

Surescripts comment: As was mentioned above, it is important to be specific about exactly what type of standards/solutions the workgroup believes have yet to be created. It will be very difficult for Surescripts and the HIT industry to address the workgroup's concerns without such explicit guidance.

With respect to the Recommendations section, we are pleased to report that we are in basic agreement with the six recommendations made by the workgroup. We would, however, offer the following suggestions for slight modifications to two of your recommendations:

- Page 7, Section IV) Recommendations, C) “Direct the Department of Insurance to establish standards and forms for use in the prior authorization process (paper and electronic) with the goal of maximizing efficiency for providers and payers and timeliness for patients (Resolution 3).”

Surescripts comment: Mention was made in the Background section that the state of California has considered legislation along the lines of Recommendation C, and in fact, the state has recently enacted such legislation. In said legislation, after making a requirement similar to that in Recommendation C, the following additional requirement is made:

“The department and the Department of Insurance, in development of the standardized form, shall take into consideration the following: (A) Existing prior authorization forms established by the federal Centers for

Medicare and Medicaid Services and the State Department of Health Care Services. (B) National standards pertaining to electronic prior authorization.”

We encourage the workgroup to add similar language to Recommendation C with the goal of ensuring that, if the recommendation becomes law or regulation, the standards and/or forms established by the Department of Insurance will be consistent with those used in the other states around the country.

- Page 7, Section IV) Recommendations, D) “Prohibit referral of prescriptions to pharmacies owned by prescribers or intermediaries (Resolution 4).”

Surescripts comment: The workgroup should be precise in terms of which type of intermediaries it is referring to in this recommendation. Does the workgroup mean payers, claims processors, pharmacy benefits managers, health information exchanges, or e-prescribing networks? If it is the last, Surescripts, and to our knowledge, no other e-prescribing or HIT networks, own any pharmacies to which they might refer prescriptions. Consequently, it is not clear what practice this is meant to prevent. Clarity in terms of this particular part of Recommendation D would be greatly appreciated.

In closing, we would like to thank you and your colleagues on the workgroup for the fine effort that you have made in response to Senate Resolution 81(2011), and we appreciate this opportunity to share our comments and suggestions with regard to your draft report. Should either you or your colleagues have questions about any of the feedback that we have provided to you, please don't hesitate to contact me. Kindly be advised that, should you need to contact me between now and the close of the comment period on December 26, 2011, a telephone call will be the most effective mode of communication (I will be spending time with family over the holidays and will have limited access to email.)

Sincerely,

/s/ Ken Whittlemore Jr.

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