alternatives (if any) for the drug prescribed. The MMA directed the Secretary to issue uniform standards for the electronic transmission of such data.

There is no requirement that prescribers or dispensers implement e-prescribing. However, prescribers and dispensers who electronically transmit prescription and certain other prescription-related information for covered drugs prescribed for Medicare Part D eligible beneficiaries, directly or through an intermediary, would be required to comply with any applicable final standards that are in effect.

b. Foundation Standards and Exemption for Computer Generated Facsimiles (Faxes)

In the E-Prescribing and the Prescription Drug Program final rule (70 FR 67568, November 7, 2005), we adopted the NCPDP SCRIPT standard, Implementation Guide, Version 5, Release 0 (Version 5.0), May 12, 2004, excluding the Prescription Fill Status Notification Transaction (and its three business cases; Prescription Fill Status Notification Transaction—Filled, Prescription Fill Status Notification Transaction—Not Filled, and Prescription Fill Status Notification Transaction—Partial Fill), hereafter referred to as NCPDP SCRIPT 5.0, as the standard for communicating prescriptions and prescription-related information between prescribers and dispensers. Subsequently, on June 23, 2006 (71 FR 36020), HHS published an interim final rule that maintained NCPDP SCRIPT 5.0 as the adopted standard, but allowed for the voluntary use of a subsequent backward compatible version of the standard, NCPDP SCRIPT 8.1. As use of either of these two named versions of the NCPDP SCRIPT standard is permitted, for ease of reference, we will simply refer to "NCPDP SCRIPT" in this rule.

The November 7, 2005 final rule also established an exemption to the requirement to utilize NCPDP SCRIPT for entities that transmit prescriptions or prescription-related information by means of computer generated facsimiles (faxes generated by one computer and electronically transmitted to another computer or fax machine which prints out or displays a image of the prescription or prescription-related information). Providers and dispensers who use this technology are not compliant with NCPDP SCRIPT. The exemption was intended to allow such providers and dispensers time to upgrade to software that utilizes the NCPDP SCRIPT standard, rather than forcing them to revert to paper prescribing.

c. Elimination of Exemption

In the CY 2008 PFS proposed rule (72 FR 38194), we proposed to revise § 423.160(a)(3)(i) to eliminate the computer generated fax exemption to the NCPDP SCRIPT Standard for the communication of prescription or certain prescription related information between prescribers and dispensers for the transactions listed at § 423.160(b)(1)(i) through (xii).

Since computer-generated faxing retains some of the disadvantages of paper prescribing (for example, the administrative cost of keying the prescription into the pharmacy system and the related potential for data entry errors that may impact patient safety), we believed it was important to take steps to encourage prescribers and dispensers to move toward use of NCPDP SCRIPT.

In our November 7, 2005 final rule discussion of computer-generated faxing, we distinguished between cases where the prescriber's or dispenser's software has the ability to generate transactions utilizing the NCPDP SCRIPT, but the prescriber has not activated the feature on their software, and other cases where software (such as a word processing program) is used to create a document that can be sent as a fax that results in print out or displays a image of a prescription or response at the receiving end, but does not have true e-prescribing (electronic data interchange using NCPDP SCRIPT) capabilities.

We believed the elimination of the computer-generated fax exemption would encourage prescribers and dispensers using this computer-generated fax technology to, where available, utilize true e-prescribing capabilities.

It might also encourage those without such capabilities to upgrade their current software products, or, where upgrades are not available, to switch to new products that would enable true e-prescribing.

Because the elimination of the computer-generated facsimile exception would encourage those prescribers that are already using e-prescribing software that is capable of true e-prescribing to utilize those capabilities, we believed that the elimination of the computer-generated fax exemption would increase the number of NCPDP SCRIPT transactions fairly significantly in a relatively short time period, and that this could, in turn, create a "tipping point" that could create economic incentives for independent pharmacies to adopt NCPDP SCRIPT capable software to begin to exchange true e-prescribing transactions with their prescriber partners.

We proposed to eliminate the computer generated fax exemption effective 1 year after the effective date of the CY 2008 PFS final rule, on January 1, 2009. We believed that this would provide sufficient notice to prescribers and dispensers who would need to implement or upgrade e-prescribing software to look for products and upgrades that are capable of generating and receiving transactions that utilize NCPDP SCRIPT. It would also afford current e-prescribers time to work with their trading partners to eventually eliminate computer-to-fax transactions.

We believed the elimination of the exemption for computer-generated faxing would encourage e-prescribers and dispensers to move as quickly as possible to use of the NCPDP SCRIPT standard with what we perceived to be minimal impact.

We solicited comments on the impact of the proposed elimination of this exemption.

Comment: Several commenters concurred with our proposal to eliminate the exemption for computer-generated faxes. These commenters indicated that lifting the exemption for computer generated faxes would act as an incentive to move prescribers and dispensers toward true e-prescribing (electronic data interchange using the NCPDP SCRIPT standard) and that once the benefits of true e-prescribing are realized by a core group of prescribers and dispensers, word of mouth would help foster more extensive adoption.

Less than half of all commenters disagreed with our proposal to eliminate the exemptions for computer-generated faxes, citing concerns about increased hardware/software costs, transaction fees, certification and other activation costs. Some commenters agreed that many prescribers who are already e-prescribing likely already possess the ability to generate NCPDP SCRIPT compliant transactions using their software or can comply by obtaining a version upgrade under their maintenance agreements. Some commenters also questioned whether lifting the exemption would move the industry forward toward, or raise barriers to, greater use of true e-prescribing. We also received comments from some individuals who erroneously thought that we had proposed the elimination of all faxes, including paper-to-paper faxes.

Response: For new e-prescribers, the cost of implementing a product that can generate an NCPDP SCRIPT-compliant transaction would not differ from a

in § 414.704 of this chapter) described in section 1842(o)(1) of the Act provided that payment for such *drug* is not included in the payment amount for other CORF services paid under paragraphs (a) or (c).

(e) *Payment for CORF services when no fee schedule amount for the service.* If there is no fee schedule amount established for a CORF service, payment for the item or service will be the lesser of 80 percent of:

(i) The actual charge for the service provided that payment for such item or service is not included in the payment amount for other CORF services paid under paragraphs (a), (c), or (d) of this section.

(ii) The amount determined under the fee schedule established for a comparable service as specified by the Secretary provided that payment for such item or service is not included in the payment amount for other CORF services paid under paragraphs (a), (c), or (d) of this section.

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

■ 38. The authority citation for part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Part B Carrier Payments for Physician Services to Beneficiaries in Providers

■ 39. Section 415.130 is amended by revising paragraph (d) to read as follows:

§ 415.130 Conditions for payment: Physician pathology services.

* * * * *

(d) *Physician pathology services furnished by an independent laboratory.* The technical component of physician pathology services furnished by an independent laboratory to a hospital inpatient or outpatient on or before December 31, 2007, may be paid to the laboratory by the carrier under the physician fee schedule if the Medicare beneficiary is a patient of a covered hospital as defined in paragraph (a)(1) of this section. For services furnished after December 31, 2007, an independent laboratory may not bill the carrier for the technical component of physician pathology services furnished to a hospital inpatient or outpatient. For services furnished on or after January 1, 2008, the date of service policy in § 414.510 of this chapter applies for the technical component of specimens for physician pathology services.

PART 418—HOSPICE CARE

■ 40. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Condition of Participation: Other Services

■ 41. Section 418.92 is amended by revising paragraph (a) to read as follows:

§ 418.92 Condition of participation—Physical therapy, occupational therapy, and speech-language pathology.

(a) Physical therapy, occupational therapy, and speech-language pathology services must be—

(1) Available, and when provided, offered in a manner consistent with accepted standards of practice; and

(2) Furnished by personnel who meet the qualifications specified in part 484 of this chapter.

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 42. The authority citation for part 423 continues to read as follows:

Authority: Secs 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart D—Cost Control and Quality Improvement Requirements

■ 43. Section 423.160 is amended by—

■ A. Revising paragraph (a)(3)(i).

■ B. Redesignating paragraphs (a)(3)(ii) and (iii) to (a)(3)(iii) and (iv), respectively.

■ C. Adding new paragraph (a)(3)(ii).

The revision and addition reads as follows:

§ 423.160 Standards for electronic prescribing.

(a) * * *

(3) * * *

(i) Entities transmitting prescriptions or prescription-related information by means of computer-generated facsimile are exempt from the requirement to use the NCPDP SCRIPT Standard adopted by this section in transmitting such prescriptions or prescription-related information until January 1, 2009;

(ii) After January 1, 2009, electronic transmission of prescriptions or prescription-related information by means of computer-generated facsimile is only permitted in instances of temporary/transient transmission failure and communication problems that would preclude the use of the NCPDP SCRIPT Standard adopted by this section.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 44. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 45. The heading for subpart B is revised to read as set forth below.

Subpart B—Certification and Plan Requirements

■ 46. Section 424.24 is amended by revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 424.24 Requirements for medical and other health services furnished by providers under Medicare Part B.

* * * * *

(c) * * *

(2) *Timing.* The initial certification must be obtained as soon as possible after the plan is established.

(4) *Recertification.* (i) *Timing.* Recertification is required at least every 90 days.

(ii) *Content.* When it is recertified, the plan or other documentation in the patient's record must indicate the continuing need for physical therapy, occupational therapy or speech-language pathology services.

(iii) *Signature.* The physician, nurse practitioner, clinical nurse specialist, or physician assistant who reviews the plan must recertify the plan by signing the medical record.

* * * * *

■ 47. Section 424.27 is amended by revising paragraph (b)(1) to read as follows:

§ 424.27 Requirements for comprehensive outpatient rehabilitation facility (CORF) services

* * * * *

(b) * * *

(1) *Timing.* Recertification is required at least every 60 days for respiratory therapy services and every 90 days for physical therapy, occupational therapy, and speech-language pathology services based on review by a facility physician or the referring physician who, when appropriate, consults with the professional personnel who furnish the services.

* * * * *

■ 48. In § 424.32, paragraph (a)(3) is revised to read as follows: