Statement by the
American Society of Consultant Pharmacists
Alexandria, Virginia

Statement for the Record
Health, Education, Labor & Pensions Committee
United States Senate
Oversight Hearing On
Medical Privacy
April 16, 2002

On March 26, 2002, the Department of Health and Human Services (HHS) released a notice of proposed rulemaking (NPRM) containing several important changes to the privacy standards promulgated by the Health Information Portability and Accountability Act (HIPAA) of 1996. The American Society of Consultant Pharmacists (ASCP), representing more than 7,000 consultant and senior care pharmacists, commends HHS for its efforts to ensure strong privacy protections for patient health information while correcting many of the final rule's provisions that would have threatened patients' access to quality care. While ASCP supports a patient's right to control how their personal health information is used and disclosed, the rule must be carefully constructed to limit any barriers to effective, efficient, and appropriate health care.

In particular, ASCP supports the modification in the NPRM with regard to prior consent. This proposed modification still protects the privacy of an individual's personal health information without negatively impacting access to quality care. The proposal also ensures patients will receive proper notice and information about their rights without burdening them or health care providers with a complex prior consent form that could delay or disrupt health care treatment by a consultant pharmacist.

As the international professional society representing senior care pharmacists, we believe the proposed optional consent requirement presents a fair and accurate balance between patient rights and provider needs. Below are some examples of the impact on access to quality care if mandatory prior consent is not modified as proposed by HHS:

- Long-term care patients typically undergo a thorough drug regimen review of their medications upon admission to the facility. This review includes screening for inappropriate medications, actual and potential adverse medication reactions, and recommendations for discontinuing harmful and/or duplicative prescriptions. These services are essential in order to provide the most appropriate drug therapy for each individual patient based on their

disease state(s), health status, and age. If the prior consent provision is not changed, patients would incur an extended "waiting period" before they could have their drug regimen reviewed by a consultant pharmacist for therapeutic appropriateness.

- In many cases, the patients in long-term care facilities live hundreds of miles from relatives, guardians, or conservators, and often suffer from dementia or other forms of cognitive impairment. The original prior consent provision in the final privacy rule would require the provider pharmacy to go to great lengths to find and contact a family member or appointed ombudsman to consent for treatment—significantly delaying appropriate care.
- To further complicate the matter, medications dispensed to patients of long-term care facilities are provided by off-site pharmacies because the regulatory and financial burdens of maintaining an onsite pharmacy would be too great for many long-term care facilities. In rural areas of the country, the provider pharmacy may be located more than 100 miles or up to a two-hour drive away from the facility. In these cases, the original prior consent provision would require the pharmacy to physically pick up the original, signed consent and bring it back to the pharmacy before dispensing and delivering medications to a facility — creating a nightmare for patients and health care providers.

The consent requirement change proposed by HHS meets the objectives of providing adequate notice to patients, while recognizing the timely information needs of providers in order to deliver quality health care.

HHS has also addressed and clarified many of ASCP's concerns regarding the minimum necessary provision and oral communications. In the original interpretation of the Final Privacy Rule released in December 2000, it appeared that providers would be overly burdened in trying to avoid and/or limit their communications involving personal health information, regardless of whether the communication is taking place provider-to-patient or provider-to-provider. For example, ASCP had concerns that physicians would feel compelled to only release the medication history of a patient to a pharmacist providing treatment. Yet, in order to ensure the appropriateness of an elderly individual's drug therapy, the full medical history— including diagnoses, nutrition, mental health status, and physician notes—needs to be ascertained and reviewed by a consultant pharmacist.

As stated in the guidance document issued in June 2001 and the proposed modifications, HHS clarified that providers should simply make "reasonable accommodations" to avoid incidental disclosures and that communications involving patients' personal health information is permitted between physician and consultant pharmacist.

ASCP strongly supports the rationale behind providing appropriate privacy protections, but also urges HHS to continue to ensure workable rules that will not

hinder provision of quality health care. ASCP looks forward to working with the administration to implement the privacy regulations, and will provide more extensive feedback to HHS during the public comment period. Again, ASCP commends HHS and HHS Secretary Thompson for their efforts and we hope to ensure the workability of these regulations before we reach the end of the privacy standards compliance period on April 14, 2003 so health care providers will have adequate time to implement this important rule. If adequate time is not allotted for feasible privacy standards compliance, ASCP looks to HHS to extend the compliance period.

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The American Society of Consultant Pharmacists (ASCP) is the international professional association that provides leadership, education, advocacy, and resources to advance the practice of senior care pharmacy. ASCP's 7,000 members manage and improve drug therapy and improve the quality of life of geriatric patients and other individuals residing in a variety of environments, including nursing facilities, subacute care and assisted living facilities, psychiatric hospitals, hospice programs, and in home and community-based care.