

**Comments from the National Alliance of State Pharmacy Associations**  
**June 18, 2007**

**Regarding the Implementation of Section 702 (b) of the Supplemental Appropriations Funding bill (P.L. 110-28)**

*Effective October 1, 2007; Medicaid outpatient drugs (as defined in Section 1927(k)(2) of the Social Security Act) will be reimbursable only if non-electronic written prescriptions are executed on a tamper-resistant pad*

**General Comments:**

The National Alliance of State Pharmacy Associations (NASPA) appreciates the opportunity to discuss the implementation of these provisions and concerns raised by practicing pharmacists across the country on the ability of Medicaid beneficiaries to obtain their prescriptions. The potential impact on Medicaid beneficiaries, pharmacists, and prescribers will be significant. Implementation issues that we are concerned with focus on Medicaid beneficiaries and the action that the pharmacist should take if the prescription is not written on tamper-resistant pad. We feel Medicaid recipients' access to their needed medications should be of paramount concern and a pharmacist should be held harmless if a physician is non-compliant with these provisions.

Implementation issues and questions that have been identified at this time by are listed below, including those from states that have already mandated some form of tamper-resistant pads. We believe there may be additional implementation issues that arise and would request that we be able to share them and together look for solutions to minimize the risk that patient care is compromised.

**Define tamper-resistant prescription pads**

It will be essential to provide guidance on the definition of tamper-resistant pads. This guidance should insure that states with current provisions do not need to make modifications. We would urge the guidance to allow as much innovation in the marketplace as possible so competition can drive the expense down. However, this is a complex issue having to balance the guidance to assure flexibility without placing the burden of determining what is and what is not tamper resistant on the pharmacist.

**Allow sufficient time for implementation**

It is our understanding that state-based regulations may need to be amended to accommodate these new Federal requirements. Some of these may require state legislative changes. We would suggest that states should be required to develop an implementation plan by October 1, 2007 with demonstrable advances towards complete compliance within 12 months.

**Refusal of services to Medicaid beneficiaries**

We feel that the states need to adopt provisions that support the pharmacist in not refusing services to Medicaid recipients for prescribers' noncompliance. These provisions should address:

- Non-Medicaid prescribers who write prescriptions
- Prescriptions written by clinics and by emergency room physicians
- Prescriptions that are presented at times when the prescriber cannot be reached (e.g., evenings, holidays, and weekends).

In all of these cases, the pharmacist will likely be put in the untenable situation of either having to turn the patient away or dispense a non-compliant prescription. The latter would entail the prescription not being entitled to payment from Medicaid. Prescriptions that are dispensed by the pharmacist in situations where the physician cannot be contacted should be exempt from the requirement that they be written on tamper-resistant pads.

**Recognize pharmacy storage of scanned prescriptions**

Many pharmacies are permitted by Federal and state law to scan the image of the prescription for storage purposes.

Scanning technology has created efficiencies in the dispensing of prescriptions and has can also help reduce the potential for dispensing errors. However, scans of prescriptions written on tamper-resistant paper may not scan appropriately, reducing the effectiveness of technology in providing pharmacy services to Medicaid beneficiaries. This is a problem that does not have an immediate solution.

#### **Clarify patient population covered by these provisions**

We assume this applies for traditional Medicaid recipients and not beneficiaries covered by Medicaid managed care plans.

#### **Non-written prescriptions should be exempt**

All non written prescriptions need to considered exempt (e.g. a phone in prescription; electronically generated and given to the patient, electronically generated and sent to a pharmacy's fax machine; written and faxed).

#### **Other exemptions necessary**

With the implementation of any new requirement, exemptions must be contemplated. At this time, we can identify the following exemptions that are warranted:

- All prescriptions written prior to October 1, 2007 that have valid refills.
- Prescriptions written by residents.
- Exempt prescriptions in cases of retroactive eligibility.

#### **State auditing practices**

CMS needs to send a strong and consistent message to states regarding any auditing practice that would send a signal to pharmacy that they should deny a Medicaid beneficiary services. Implementation of provisions that require one health provider to adapt to a new procedure, but place the burden of implementation on another provider is unacceptable and needs to be creatively enforced.

NASPA promotes leadership, sharing, learning, and policy exchange among pharmacy leaders in all 50 states and Washington, DC and provides education and advocacy to support pharmacists, patients, and communities working together to improve public health. Please contact us if you have any follow up questions, on this or any pharmacy issue.

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