Seniors and People with Disabilities

Information Memorandum
Transmittal

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Authorized Signature

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Issue Date: 9/18/2007

Topic: Medical Benefits

Subject: Requirement for tamper-resistant prescriptions

Applies to (check all that apply):
- All DHS employees
- Area Agencies on Aging
- Children, Adults and Families
- County DD Program Managers
- County Mental Health Directors
- Health Services
- Seniors and People with Disabilities
- Other (please specify): DD case managers and Brokerages

Message: There is a new federal law requiring tamper-resistant medication orders/prescriptions starting October 1, 2007. For most medication orders/prescriptions where the pharmacy receives a hard copy (piece of paper), that piece of paper must meet certain tamper-resistant standards in order for Medicaid fee-for-service to reimburse the pharmacist. Here are some important points:

- Medication orders/prescriptions that are faxed or electronically or verbally transmitted to the pharmacy from the prescriber are exempt.
- If the pharmacy chooses to fill a non-compliant prescription, they have 72 hours to replace the non-compliant prescription with a compliant one.
- This requirement only applies to those medications eligible for payment (in whole or cost-sharing) from Medicaid fee-for-service. Those clients on Medicare Part A nursing facility stay and those clients in Medicare Advantage, Part D plans, or Medicaid managed care plans are exempt for most, if not all their medications.
- Clients may find that pharmacists may refuse to fill certain prescriptions, starting October 1. The best solution is to have either the prescriber fax or call the prescription in directly to the pharmacy.

Attached are notices that were sent to nursing facilities, assisted living facilities, Adult Foster Homes, and DD 24 hr residential providers. Also attached is a quick “cheat sheet” and the notice sent from DMAP to medical providers and pharmacies.

If you have any questions about this information, contact:

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On October 1, pharmacies may refuse to fill certain prescriptions if the prescriptions do not comply with a new federal law.

Tamper-resistant medication orders/ prescriptions

There is a new federal law requiring tamper-resistant medication orders/prescriptions starting October 1, 2007. For most medication orders/prescriptions where the pharmacy receives a hard copy (piece of paper), that piece of paper must meet certain tamper-resistant standards in order for Medicaid fee-for-service to reimburse the pharmacist. Here are some important points:

- Although most of the discussion has centered on prescription pads, medication orders are not considered different than prescription pads.
- Medication orders/prescriptions that are faxed or electronically or verbally transmitted to the pharmacy from the prescriber are exempt.
- If the pharmacy chooses to fill a non-compliant prescription, they have 72 hours to replace the non-compliant prescription with a compliant one.
- This requirement only applies to those medications eligible for payment (in whole or cost-sharing) from Medicaid fee-for-service. Those clients on Medicare Part A nursing facility stay and those clients in Medicare Advantage, Part D plans, or Medicaid managed care plans are exempt for most, if not all their medications.
- This rule applies to refills for prescriptions filled for the first time on or after October 1, 2007.

Specific Information for Nursing Facilities and ALF/RCFs, Adult Foster Homes and DD residential services using LTC pharmacies

- Whenever possible, it is best to have the prescriber fax medication orders both to your facility/home and to the pharmacy.
- When clients, families, or staff present with prescriptions or orders from the prescriber’s offsite office, the prescription (for Medicaid fee-for-service to pay) must be on a tamper resistant pad. One of the security features of the pad is that it could become illegible with
faxing or copying. That scrip has to be physically transmitted to the pharmacy or have the prescriber call it in directly to the pharmacy.

- Faxed and telephone prescriptions and orders from the prescriber sent directly to facilities and homes, are exempt from the need to be on tamper-resistant paper if (1) staff then relay (via telephone, fax) the prescription to the pharmacy or if (2) the pharmacy picks up the order or prescription, **AND** there is no possibility that the client or family have the opportunity to handle that written order. NOTE: Only a licensed nurse (RN and LPN) may relay verbal orders from a prescriber to a pharmacy. If unlicensed staff (medication aides, caregivers) receive verbal orders, they should request that the prescriber also call the order in to the pharmacy. Unlicensed staff may receive faxed orders directly from the prescriber, and then must fax it directly to the pharmacy.

- Medication orders written in the home or facility by the prescriber and then transmitted to the pharmacy by staff, without any possibility that the client or family have the opportunity to handle that written order, are also exempt from the need to be on tamper-resistant paper.

**Providers are urged to do the following immediately:**

1. Read the attached Provider Notice that was sent to both prescribers and pharmacies for further information.
2. Talk to your pharmacist about your medication practices. Are there prescriptions or medications orders that must be on tamper-resistant paper in order to be filled (and paid by OHP/ DMAP)?
3. If you do not already fax most medication orders to the pharmacy, consider how you should change your practices. If you fax requests for changes in medications or new orders to your physician, consider asking the prescriber to fax the new order to **both** your facility and the pharmacy.
4. If clients (with or without staff) access physicians’ offices and bring back prescriptions or orders, they must be on tamper-resistant pads. If they are not, the physician can call the pharmacist (or vice versa) to replace the non-compliant prescription. If problems occur regularly, you may want to share the attached notice to providers with that prescriber.
Tamper-Resistant Prescriptions
Cheat Sheet

Summary: Basically, as of 10/1/07, prescriptions (that Medicaid fee-for-service funds) must be on tamper-resistant paper. The exceptions are strategies where the client or family (or others who are not staff) never have access to that piece of paper.

What is ok
- Prescriber calls or faxes the order to both the pharmacy and the home/facility.
- Prescriber faxes an order to the home/facility and the home/facility relays the order to the pharmacy, via fax, telephone, or pharmacy pick-up.
- Nurses in the home/facility take a telephone order and the facility/home then relays it to the pharmacy, via fax or pharmacy pick-up. If the pharmacy is called, a nurse must make the call.
- A prescriber writes a prescription on a tamper resistant form and that prescription/order is physically given to the pharmacy.
- A prescriber, while in the home/facility, writes an order and that order is relayed to the pharmacy, via telephone, fax or pharmacy pick-up.

What is not ok
- A prescriber uses a standard piece of paper for a prescription/order and that is given to the pharmacy.
- A facility/home tries to fax most tamper-resistant prescriptions to the pharmacy.
- An unlicensed person takes a telephone order and that order is relayed to the pharmacy by the home/facility. (The prescriber does not also give the order directly to the pharmacy).
On August 17, the Centers for Medicare and Medicaid Services (CMS) issued a letter to State Medicaid Directors that offers guidance on the change in Section 1903(i) of the Social Security Act that states:

- The federal government will not fund Medicaid payments “for covered outpatient drugs . . . for which the prescription was executed in written (and nonelectronic) form unless the prescription was executed on a tamper-resistant pad.”

This requirement must be met whether Medicaid is the primary or secondary payer. We hope this information helps you prepare for meeting the new requirements by October 1, 2007.

What is “tamper-resistant”?

Prescriptions transmitted directly from the prescriber or medical facility to the pharmacy by fax, telephone, or electronic submission (“e-prescription”) are tamper-resistant. Except where DEA regulations require a written prescription (i.e., for Schedule II controlled substances), DMAP encourages prescribers to submit prescriptions electronically, by phone, or by fax whenever possible.

For written prescriptions, CMS guidance states that beginning October 1, 2007, tamper-resistant pads must contain at least one of the following characteristics. By October 1, 2008, pads must contain all three of these characteristics to be considered tamper-proof:

<table>
<thead>
<tr>
<th>Characteristics defined by CMS</th>
<th>Examples include but are not limited to:</th>
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<tbody>
<tr>
<td>One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form</td>
<td>Security watermark</td>
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<td></td>
<td>Pantograph screen – Displays background graphic or “VOID” when photocopied</td>
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<tr>
<td></td>
<td>Microprinting, prismatic printing, chemical reactive paper, thermochromatic or coin-reactive ink – Features that photocopying cannot reproduce</td>
</tr>
<tr>
<td>One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber</td>
<td>Erasure protection, graduated background color, bleeding ink, erasable ink – Features that show erasure or modification has been attempted on the prescription</td>
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<tr>
<td></td>
<td>Diagonal lines on the back of the paper – Discourages cutting and pasting of the prescription</td>
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<tr>
<td>One or more industry-recognized features designed to prevent the use of counterfeit prescription forms</td>
<td>Warning band – Identifies the tamper-resistant features of the prescription</td>
</tr>
<tr>
<td></td>
<td>Unique serial numbers</td>
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</table>

Beginning October 1, 2007, DMAP will consider “tamper-proof” any prescription pad that meets one of the characteristics defined by CMS. DMAP will file a temporary rule to enforce this requirement effective October 1, 2007.
California, Florida, Idaho, Indiana, Kentucky, Maine, New Jersey, New York, Texas, and Wyoming have already implemented similar requirements. According to CMS, the pads required by these states meet or exceed CMS requirements. DMAP will provide a summary of other states’ requirements on the OHP Web site at www.oregon.gov/DHS/healthplan/.

What prescriptions need to be on tamper-resistant paper?
This requirement applies to written and computer-printed prescriptions for outpatient drugs reimbursed from DMAP on a fee-for-service basis, where Medicaid reimburses for the drug separately from any other service, and the client delivers the written prescription to the pharmacy for dispensing. This includes prescriptions written on hospital discharge orders.

- When clients become retroactively eligible for Medicaid coverage, the pharmacy must confirm that the written prescription is tamper-resistant before dispensing any current or future refills on a prescription filled before the client became retroactively eligible.

What prescriptions do not need to be on tamper-resistant paper?
The tamper-resistant pad requirement does not apply to prescriptions sent from the prescriber to the pharmacy by fax, telephone, or e-prescription. The following types are also exempt:

- Refills of written prescriptions that were presented at a pharmacy before October 1, 2007
- Written prescriptions paid for by a managed care entity (i.e., DMAP medical plan or physician care organization)
- Written prescriptions paid for by Medicare, a Medicare Part D plan or Medicare Advantage Plan, unless Medicaid fee-for-service is a secondary payer
- Written, faxed, and telephoned orders sent from the prescriber directly to long-term care facilities, community-based facilities, or other institutional settings, that the facility’s medical staff then enter into the patient’s medical record and deliver to the pharmacy, so long as the patient or patient’s family never has the opportunity to handle the written order

What to do when the prescription is not on tamper-resistant paper
When a pharmacy receives a non-compliant written prescription, the pharmacy may obtain confirmation from the prescriber (by fax, telephone or e-prescription) that the prescription can be dispensed as received. Documenting this confirmation on the non-compliant prescription makes the prescription compliant.

- If the prescription is an emergency fill, the pharmacy may dispense the non-compliant written prescription. However, the pharmacy must then obtain a tamper-resistant prescription from the prescriber within 72 hours from the time of dispensing.

For more information

- For questions, contact Debbie Bishop, DMAP Pharmacy Program Manager at 503-945-6291 or e-mail debbie.l.bishop@state.or.us.