

VIA HAND DELIVERY

July 24, 2007

Dennis Smith, Director
Center for Medicaid and State Operations
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Public Law 110 -28 – Section 7002(b)
Use of Tamper Resistant Pads

Dear Mr. Smith:

On behalf of the National Community Pharmacists Association (“NCPA”), we wanted to take this opportunity to present our concerns with P.L. 110-28 (Iraq War Supplemental Appropriations bill) as it relates to pharmacists who participate in the Medicaid program as providers.

As you know, Section 7002(b) of that law, limits pharmacist’s reimbursement to written (non-electronic) prescriptions that are executed on a tamper resistant pad. We believe that this provision is problematic for the following reasons:

- Physicians are not required by this law to use tamper resistant pads, although we know that a few states require physicians to use these pads.
- There is no definition of a tamper resistant pad.
- There is no exemption for emergency situations when a patient comes to the pharmacy after the physician’s office is closed.
- There is no hold harmless provision for a pharmacist that fills a prescription based on her or his knowledge of a tamper resistant pad.
- Many states contract with a third party entity to administer their Medicaid program and the patient will have an insurance card issued by that entity. How is the physician or the pharmacist to know that the patient is a Medicaid beneficiary?
- Physicians may not be aware of this requirement and may not have access to a tamper resistant pad.

As a practical matter, this law will place Medicaid beneficiaries and pharmacists in an awkward position when a pharmacist must deny a prescription because a physician did not use a tamper resistant pad and is not available for the patient or pharmacist to contact in order to correct the situation. Further, this scenario has the potential to affect an individual’s health when their

prescriptions are denied. In other words, this law penalizes both the patient and the pharmacist for the failure of the physician to use a tamper resistant pad, a fact that neither party can control.

There is great potential for negative impact upon Medicaid patients, pharmacies and physicians and the time period is very short for implementation. NCPA would like to work with you on this issue. However, until such a meeting can be arranged, we would offer the following suggestions for your consideration:

- The implementation deadline must take into account the operational difficulties in compliance i.e., adequate notice to patients, pharmacies and physicians. We recommend at least a twelve-month delay.
- The potential need for additional legislative action in some states – the majority are out of session until January 2008.
- The availability of a sufficient quantity of tamper resistant pads for physician use
- Clarification is necessary concerning the applicability of the law to faxed prescriptions. It is our understanding that there are limitations inherent in tamper resistant pad technology such that a prescription written on tamper-resistant paper and faxed will likely be illegible.
- Another potential technology issue is that of scanned prescriptions. Pharmacies are permitted by certain Federal and state laws to scan the image of the prescription for storage purposes. Scanning technology has created efficiencies in the dispensing of prescriptions and can also help reduce the potential for dispensing errors. Prescriptions written on tamper-resistant paper might not, however, scan appropriately, reducing the effectiveness of technology in providing pharmacy services to Medicaid beneficiaries. Subjecting scanned prescriptions to the requirements of the law would run counter to the safety intention of the language.
- Exemption of prescriptions written prior to October 1, 2007 that have valid refills.
- Physicians should be required to use tamper resistant pads.

We know that you have received input from members of Congress and other pharmacy organizations. We are all voicing similar concerns with this law.

While we recognize that CMS did not create this law and is now responsible for its implementation, we know that CMS does not want this law to have the unintended consequence of denying access to Medicaid patients or penalizing pharmacies for filling prescriptions. We appreciate the opportunity to share our concerns with you and as previously stated would like to meet with you to discuss our concerns in detail. We are available to answer questions and provide additional input as necessary.

Sincerely,

Charles B. Sewell
Senior Vice President, Government Affairs