

Congress of the United States
Washington, DC 20515

September 18, 2007

The Honorable John Dingell
Chairman
House Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Joe Barton
Ranking Member
House Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Frank Pallone
Chairman
Subcommittee on Health
House Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nathan Deal
Ranking Member
Subcommittee on Health
House Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Dingell and Pallone and Ranking Members Barton and Deal:

We write to ask you to support delayed enforcement of the newly issued Medicaid requirement which mandates all Medicaid prescriptions be written on tamper resistant prescription pads. Under Section 7002 (b) of the Iraq War Supplemental Appropriations bill (Public Law 110-28), all Medicaid prescriptions must be written on tamper resistant paper in order to be eligible for federal reimbursement beginning October 1, 2007.

As Members of Congress, we are committed to identifying and reducing any fraud that may exist in the Medicaid program, including fraud associated with prescription medications. We support the intent behind this policy, but still have considerable concerns. Please consider delaying all penalties and fines associated with the regulations until states have sufficient time to craft policies and conduct the education campaigns needed to avert problems once the provision goes into effect.

In addition to our concerns regarding the short implementation time frame, a number of difficult questions remain, thus further justifying delayed implementation.

- What are the industry standards that CMS recognizes for preventing copy, erasure or counterfeiting?
- With so many variables, what resources are available to pharmacists to identify industry standards and therefore enable them to identify tamper resistant prescriptions?
- Do states have the ability to delay implementation or enforcement?
- Will pharmacists need to verify prescriptions for beneficiaries that are determined to be retroactively eligible for Medicaid?
- Will there be resources to help physicians and pharmacists identify Medicaid as the secondary payer to help limit the number of prescriptions that may need to be reprocessed if the prescription was non-compliant?
- How does the provision apply to discharge prescriptions for a Medicaid patient when they leave an inpatient setting with prescriptions to be filled in an outpatient pharmacy?
- How does this provision apply to computer generated prescriptions that print on plain paper and are then signed by the prescriber for the patient to take to the pharmacy? Is there an industry standard to address computer printer paper?

- Are there any restrictions regarding who can supply prescribers with compliant tamper resistant prescription pads?
- Does CMS' reference to "controlled dangerous substance" include states schedules of controlled substances?
- The guidance provides 72 hours to receive a compliant prescription if the pharmacist fills the full prescription or an emergency supply. Once an emergency script is filled, does this provision preempt State laws and regulations that may allow more days to receive a written prescription?

Since the statute became law, we have received numerous calls and letters from state officials, state Medicaid agencies, pharmacists, doctors, patient advocacy groups, paper printing companies and others, expressing deep concerns over the looming implementation date. While we support efforts to reduce fraud in the Medicaid program, it is clear that implementing this requirement in the allotted timeframe will cause significant damage to all groups involved.

Additionally, please consider the dangerous precedent that this statute creates by singling out Medicaid beneficiaries. This requirement will only add additional barriers to entry for Medicaid patients, and could have a significant adverse impact on provider participation at a time when network advocacy is already challenged.

Thank you for your attention to this important issue. We look forward to working with you to address these concerns prior to the October 1, 2007 implementation date.

Sincerely,

CC: Speaker Nancy Pelosi
Majority Leader Steny Hoyer