

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

EMERGENCY

PUBLIC NOTICE

Pharmaceutical Services Program – Tamper-Resistant Prescription Pads

NATURE OF THE PROCEEDINGS:

This emergency regulation is being promulgated to amend the Delaware Medical Assistance Program (DMAP) Provider Manuals to bring Medicaid regulations into compliance with a new Federal law. Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) must take this action on an emergency basis to ensure access to quality healthcare. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

NATURE OF PROPOSED AMENDMENT:

Agency rules are revised to comply with Public Law 110-28 known as the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 requiring prescriptions in written form to be executed on tamper-resistant prescription pads in order to qualify for reimbursement by the Delaware Medical Assistance Program (DMAP). Currently, there is no rule in place to require certain types of paper for prescriptions. This federal requirement mandates that written prescriptions be printed on certain types of paper which cannot be copied. The requirement does not apply to prescriptions transmitted by telephone, facsimile, or electronic prescribing. Effective October 1, 2007, federal financial participation (FFP) will not be available for written prescriptions to eligible Medicaid beneficiaries that are not written on tamper-resistant prescription pads.

SUMMARY OF THE PROPOSED AMENDMENT:

A. Beginning October 1, 2007, DMAP will require that a tamper-resistant prescription pad must contain at least one of the following three CMS defined characteristics:

1. One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;
2. One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber;
3. One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

B. Appropriate DMAP Provider Manuals will be updated to provide additional detail including examples of features, which comply with the above requirements.

Delaware Medical Assistance Program (DMAP) provider manuals and official notices are available for downloading from the DMAP website: www.dmap.state.de.us or EDS Pharmacy Services may be contacted at (800) 999-3371- Select #0, then #1.

This emergency regulation is also published concurrently herein under “Proposed Regulations” to allow for public comment.

FINDINGS OF FACT:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of rule revisions to comply with Public Law 110-28 known as the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007

which requires that all prescription drugs in written form be executed on tamper-resistant prescription pads in order to qualify for reimbursement under federal Medicaid guidelines. Rule revisions are necessary since federal financial participation will not be available for written prescriptions for eligible Medicaid beneficiaries on or after October 1, 2007, that are not written on tamper-resistant prescription pads. Accordingly, beginning October 1, 2007, DMAP will require that a tamper-resistant prescription pad must contain at least one of the following three CMS defined characteristics: (1) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form; (2) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and, (3) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revisions to the Delaware Medical Assistance Program (DMAP) provider manuals to comply with the tamper-resistant prescription pad provisions of Public Law 110-28 known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 be adopted on an emergency basis without prior notice or hearing, and shall become effective October 1, 2007.

Vincent P. Meconi, Secretary, DHSS
9-14-07

DMMA EMERGENCY ORDER REGULATION #07-48

REVISIONS:

(Regulation Number will be assigned pending further review and analysis by Department staff)

Effective October 1, 2007, Section 1903(i) of the Social Security Act requires that written (non-electronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, DMAP will only reimburse for covered Medicaid outpatient drugs when the written (non-electronic) prescription is executed on a tamper-resistant pad, or the prescription is electronic, faxed, or verbal.

11 DE Reg. 374 (10/01/07) (Emer.)