Pharmacists Must Now Be Detectives
Is the Prescription Pad ‘Tamper-Proof’?

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Pharmacists around the country now have one more administrative chore to worry about. Fortunately, this task concerns only their Medicaid patients—but that may be small comfort.

October 1, 2007, was the start date for a new federal requirement that pharmacists fill only those Medicaid prescriptions, including those for over-the-counter medications, that are written on “tamper-proof” pads.

The requirement seemingly comes out of the blue, and it is being implemented very quickly, a situation that is ripe for snafus. The pads were ordered by a congressional appropriations bill passed in May. Congress, in its infinite wisdom, decided that the requirement would be an anti-fraud measure that would save the federal government money; however, no one, inside government or out, has apparently ever done a study showing that counterfeit Medicaid prescriptions are a problem.

When one performs a search on the Web site of the Office of Inspector General at the Department of Health and Human Services and types “Medicaid prescription drug fraud” into the search engine, plenty of links come up—but not one of them relates to prescription pads. Over the past years, Congress has had numerous hearings on Medicaid drug fraud, but pads were never an issue.

It is bad enough that this new requirement has such a tenuous basis in fact. What makes it even worse is the very short deadline for implementation; it goes into effect four months after Congress passed the appropriations bill.

Normally, these kinds of new mandates, which send whole industries scurrying to change their modus operandi, have lead times of a year or two—not here, though.

But hold on, it gets worse! Pharmacists are in a tough bind; it is their job to make sure that physicians use the right prescription pads, or else the pharmacists are legally liable! It is true that 10 states already have tamper-proof pad requirements, in some cases only for controlled substances.

So the good news is that the pads exist. Medicaid has said that all current pads in those states comply with the federal requirement. This is also fortunate indeed, given the requirement’s lack of specificity. Whether supplies are adequate for physicians in the other 40 states and whether the physicians and patients in those 40 states are even aware of this new requirement are unknown, but I suspect the answer to both questions is probably “no.”

So when pharmacists are not playing detective by trying to determine whether a prescription has been written on the appropriate pad, they will be busy contending with a major upsurge in phone calls from physicians who will be calling in prescriptions because they can’t find the requisite tamper-proof pad.

That is why every pharmacy group worth its salt has thrown its support behind an effort by the National Association of State Medicaid Directors to get Congress to delay implementation for one year. Dennis Smith, director of Medicaid and state operations at the Centers for Medicare and Medicaid Services (CMS), sent a letter to state Medicaid directors and refused to make a change by the October 1 deadline. However, he did clarify that the tamper-resistant pad requirement does not apply to refills of written prescriptions presented at pharmacies before October 1, 2007. Moreover, pharmacists are exempt from liability at nursing facilities, intermediate-care facilities for the mentally retarded, inpatient and outpatient hospital clinics, and some other institutional and clinical settings.

The only good news is that a number of suppliers are making pads that comply with the CMS requirement. In his letter to state Medicaid directors, Mr. Smith explained that the design of a tamper-proof pad must contain at least one of three characteristics in order to prevent:

• the unauthorized copying of a completed or blank prescription form.
• the erasure or modification of information written on the prescription by the prescriber.
• the use of counterfeit prescription forms.

To be considered tamper-resistant, the pad’s design must contain all three of the above-mentioned characteristics no later than October 1, 2008.

Again, the fact that the pads are now in existence doesn’t mean that physicians will use them. It might be difficult for pharmacists in the 40 states with no prior requirement to look at a written prescription and to determine whether it is tamper-proof.

Hrant Jamgochian, director of state relations and political action for the American Pharmacists Association, says that the 10 states requiring the use of those pads (in some cases, just for controlled substances) have set different standards for them. As a result, a pad used in New York might appear different from one used in North Carolina, and so on.

Another yet-unanswered question: What happens when pharmacists receive a noncompliant prescription? How would they turn it into a compliant one—with a phone call to the doctor’s office? Must the pharmacists document that phone call?

Hopefully, the CMS will provide some useful guidance on these questions.