Illinois Department of Healthcare and Family Services
Tamper-Resistant Prescription Pads
Questions and Answers

Updated September 4, 2007
Revisions are in red and bolded.

The Department of Healthcare and Family Services (HFS) is making changes in order to be compliant with a new federal law regarding Medicaid prescriptions. This recent change in federal law, included in section 7002(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, requires that all non-electronic Medicaid prescriptions be written on tamper-resistant prescription pads effective October 1, 2007. The following questions and answers represent the Department's current position with regard to the issue. If the federal Centers for Medicare and Medicaid Services (CMS) provides guidance contrary to the Department's current position, the Department will have to adhere to CMS requirements. The Department will update the question and answer document if changes are required based on CMS guidance.

QUESTION	RESPONSE
Does this policy apply in cases of retroactive eligibility, in cases where the prescription was written on a non-tamper-resistant pad, the pharmacy dispenses prior to the patient being determined Medicaid eligible, and the patient is subsequently determined eligible for Medicaid retroactively?	**This response was revised on September 4, 2007.** Absent guidance to the contrary from federal CMS, the Department does not consider this policy applicable to prescriptions executed and filled at a time prior to the beneficiary being determined eligible for Medicaid. It would not be possible for either the physician or pharmacist to know that a patient will become eligible for Medicaid prior to that determination being made by the Medicaid program. **Revised Response: Federal CMS requires that, in cases of retroactive eligibility, the pharmacy must ensure that a non-electronic prescription was written on a tamper-resistant pad prior to billing Medicaid, even when the patient was determined retroactively eligible for Medicaid after the prescription was filled.**

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Does this requirement apply to beneficiaries enrolled in Medicaid managed care plans?	**This response was revised on September 4, 2007 in order to provide clarification.** **Revised Response:** Yes. **Because the drug benefit is carved out of Medicaid managed care in Illinois, Illinois Medicaid covers drugs for managed care enrollees directly. Therefore,** this requirement applies to beneficiaries enrolled in Medicaid managed care plans.
Does this requirement apply to prescriptions that were presented to the pharmacy prior to October 1, 2007, are on file at the pharmacy prior to October 1, 2007, but are being refilled on or after October 1, 2007?	No. The federal law states that the requirement applies to prescriptions executed on or after October 1, 2007. The Department interprets this to mean that the requirement applies only to new prescriptions written on or after October 1, 2007.
Does this requirement apply to prescriptions that were presented to the pharmacy prior to October 1, 2007, are on file at the pharmacy prior to October 1, 2007, but are being renewed on or after October 1, 2007?	No. The federal law states that the requirement applies to prescriptions executed on or after October 1, 2007. The Department interprets this to mean that the requirement applies only to new prescriptions written on or after October 1, 2007. The Department would consider renewal of a prescription already existing at the pharmacy a renewal of a prescription executed prior to October 1, 2007, and therefore, the renewal would be exempt from this requirement.
Does this requirement apply to prescriptions written by dentists and other types of providers who can write prescriptions?	Yes. This requirement applies to prescriptions written by any type of provider.

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Does this requirement apply to prescriptions where HFS is not the primary payer? The primary payer is a third party, and HFS is the secondary payer.	Yes. This requirement does apply to all prescriptions regardless of whether HFS is the primary or secondary payer.
Electronic prescriptions are not affected by this new requirement. What constitutes an "electronic" prescription?	An electronic prescription is a prescription that is transmitted from the prescriber to the pharmacy via telephone, telefacsimile, electronic prescribing (e-prescribing) mechanism, or other means of electronic transmission.
Will HFS specify requirements for tamper-resistant prescriptions?	HFS will follow federal CMS guidelines. CMS requires that, effective October 1, 2007, in order to be considered tamper-resistant, a prescription pad must contain at least one of the following characteristics: 1) one or more industry-recognized features designed to prevent unauthorized copying of a completed or blank 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. Federal CMS requires that, effective October 1, 2008, to be considered tamper-resistant, a prescription pad must contain all of the foregoing three characteristics.

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Some physicians employ the use of electronic medical records (EMR) and enter the prescription into the computerized EMR system and then print the prescription on an 8.5" x 11" sheet of paper. The paper is then provided to the patient as their prescription. How will the Department address these prescriptions?	The Department would not consider a prescription described here as tamper-resistant unless it is printed on tamper-resistant paper that meets the specifications set forth by federal CMS for tamper-resistant prescriptions. If faxed or otherwise electronically transmitted to the pharmacy, the prescription is exempt from the tamper-resistant requirements.
Does this requirement apply to beneficiaries enrolled in all of HFS's Medical Programs, including Family Care, All Kids, etc., or does this only apply to Medicaid beneficiaries?	This policy technically applies only to Medicaid beneficiaries, i.e., individuals on whom the Department receives federal match under the Medicaid program. It may be difficult for the providers to distinguish between Medicaid and non-Medicaid populations covered under HFS's Medical Programs. For example, all children in any HFS Medical Program, including those covered under Medicaid, SCHIP, and non-match populations, are in the "All Kids" program. The Department will further consider this issue to determine whether it is possible to provide guidance to providers enabling them to distinguish between the populations. If the Department determines that it is not possible for providers to distinguish between the populations, the policy will apply to all HFS Medical Programs participants. The majority of these individuals is in a Medicaid program, and thus, would be affected by this requirement.

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If a patient presents with a non-compliant prescription, and the pharmacy calls the prescriber to verify that the prescription is legitimate, and the prescriber verifies that the prescription is legitimate, can the pharmacy then consider the prescription to be "electronic," and, therefore, exempt from the requirement that it be written on a tamper-proof pad?	HFS considers the situation described here to result in an "electronic" prescription. The pharmacist will need to document on the original prescription that contact was made with the prescriber and the prescriber verified the validity of the prescription.
If a patient presents with a prescription that is not on a tamper-proof pad, and the pharmacy cannot reach the prescriber, and the pharmacists believes not filling the prescription poses a health risk to the patient, is the pharmacist at risk if he or she dispenses the medication, even though it was not written on a tamper-resistant prescription pad?	If a pharmacist, in his or her professional judgment, determines that not filling a prescription poses a health risk to the patient, the pharmacist may fill the prescription. Federal CMS requires that the pharmacist obtain from the prescriber a verbal, faxed, electronic, or compliant written prescription within 72 hours after the date on which the prescription was filled.
Can this requirement be limited to just Schedule II Controlled Substances?	No. The federal law does not limit this requirement to only particular drugs. Therefore, the Department does not have the latitude to limit the requirement to only Schedule II controlled substances.
Where can a provider obtain the tamper-resistant prescription pads?	Information on suppliers of tamper-resistant prescription pads is available on the internet.
What is the cost of tamper-resistant prescription pads? Are they more expensive than other prescription pads?	The Department does not have cost information on prescription pads, but there is information available on the internet regarding costs of prescription pads.
Will the Department pay for the tamper-resistant prescription pads?	No.

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In states where this has been required in Medicaid, does it cause physicians to use tamper-resistant pads for all of their prescriptions? In some cases, the physician does not know when they are writing the prescription whether or not the patient is covered under Medicaid.	The Department does not know whether this has happened in states where this requirement was limited to Medicaid only, but, in most states where there is a requirement for tamper-resistant prescription pads, the requirement is not limited to Medicaid-covered prescriptions.