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DSS
Strong Families - South Dakota's Foundation and Our Future

September 14, 2007

Dear South Dakota Medicaid Provider:

The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, mandated state Medicaid agencies require the use of tamper-resistant prescription drug pads for outpatient drugs provided to Medicaid recipients. The law gave an effective date of October 1, 2007.

There is an exception to drugs provided in institutional settings to the extent the drug is not separately reimbursed from the institutional reimbursement. As an example, drugs provided during an inpatient hospital stay are exempt since they are reimbursed through the inpatient hospital reimbursement process. However, drugs prescribed to be taken home by the patient are not exempt since reimbursement is made through a pharmacy. Additionally, e-prescriptions, prescriptions faxed to the pharmacy, and called-in prescriptions are not covered under this law.

On August 17, 2007, the Centers for Medicare and Medicaid Services (CMS) issued guidance to the states regarding the implementation of the law. The guidance indicated that to be considered tamper resistant by October 1, 2007, a prescription pad must contain at least one of the following three characteristics:

1. An industry recognized feature designed to prevent unauthorized copying of a completed or blank prescription form;

2. An industry recognized feature designed to prevent the erasure or modification of information written on the prescription by the prescriber;

3. An industry recognized feature designed to prevent the use of counterfeit prescription forms.

By October 1, 2008, to be considered tamper resistant, a prescription drug pad must contain all three characteristics. Failure by the Medicaid agency to enforce the tamper resistant pad requirements may result in the loss of federal financial participation in the Medicaid program.

The Department of Social Services (DSS) has received input and suggestions from the South Dakota Medical Association, the South Dakota Pharmacy Association, the South Dakota Association of Healthcare Organizations and the South Dakota Dental Association. We all share concerns regarding the impact of the law and short implementation period as a result of the delay by CMS in issuing guidance.

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In order to meet the short timeframe, DSS is issuing a policy that effective October 1, 2007, all Medicaid outpatient prescriptions covered under the federal law must, at a minimum, be written using a gel ink pen. Prescriptions written with gel ink pens prevent the erasure of the information and meet the second required characteristic.

Since gel ink pens are readily available through office supply stores and they are relatively inexpensive (usually between $1.50 and $2.00 each), it is felt this is the quickest method to become compliant by October 1.

Because of the short timeframe, DSS will be purchasing an initial supply of gel ink pens and distributing them to all currently enrolled Medicaid providers who write prescriptions. Upon arrival of the shipment of pens, which is expected in the next two weeks, DSS will begin mailing the pens to providers. Once the supply of pens is exhausted, it is incumbent upon the provider to purchase further gel ink pens. After October 1, DSS will periodically review providers for their use of gel ink pens when writing prescriptions. Failure to use gel ink pens after October 1, 2007, may result in action taken against non-compliant providers.

It has come to our attention that some providers may already be using tamper-resistant prescription drug pads that meet characteristics one or three. If so, please continue the use of those security measures in addition to gel ink pens. Over the next year, DSS will continue to work in collaboration with the various provider associations to insure implementation and compliance with all three required characteristics. Future guidance regarding the other requirements will be provided to you well in advance of the October 1, 2008, compliance date.

Thank you for your understanding and patience regarding the implementation of this federal mandate.

Sincerely,

Larry Iversen
Medicaid Director

cc: Dave Hewitt, SD Association of Healthcare Organizations
Paul Knecht, SD Dental Association
Sue Schaefer, SD Pharmacists Association
Barb Smith, SD Medical Association