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Physicians and Pharmacy Providers: Overview of Medicaid Pharmacy Requirements

This Legal Alert supplements Hiscock & Barclay's Health Care and Human Services Practice Area's July, 2007 Alert. This Alert restates requirements that were contained in our prior Alert and addresses additional issues that have arisen as a result of recent OMIG audits of pharmacies.

As you are aware, in 2004, Governor Pataki signed into law Section 21 of the Public Health Law which mandated the use of a statewide official prescription for all prescriptions written in New York. The Official New York State Prescription Program has been implemented by the New York State Department of Health (DOH) over the past two years. This Legal Alert is intended to clarify the requirements for the various methods of ordering and filling prescription drugs and supplies under the Medicaid program in view of this law.

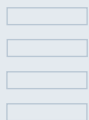
Paper prescriptions- All prescriptions written in New York must be prescribed on an Official New York State Prescription. DOH previously granted an exemption to New York State hospitals and their practitioners from this requirement. This exemption expired on April 19, 2007, unless the facility implemented an electronic prescribing process. This electronic process is permitted to be utilized only for the ordering and filling of non-controlled substances.

Faxed prescriptions/fiscal orders- Effective January 2005, DOH advised that faxed fiscal orders were now permitted for Medicaid orders of over-the-counter (OTC) drugs. The regulations supporting this policy were filed on an emergency basis in October, 2004. Additionally, follow-up hard copies of the faxed prescriptions/fiscal orders are no longer required except for faxed orders for controlled substances and non-drug supplies including medical and surgical supplies. All faxed prescriptions must be on Official New York State Prescription Forms. Each page of a faxed prescription or fiscal order must contain only one drug.

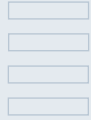
Electronic prescriptions- An electronic prescription is transmitted electronically terminal to terminal. A paper prescription that is faxed is not considered an electronic prescription. In August 1999, the New York State Department of Education (DOE) promulgated rules and regulations permitting the electronic transmission of prescriptions. These rules and regulations do not currently apply to the ordering of controlled substances. Recently proposed federal regulations may permit this at some future date. Additionally, the State Medicaid Program determined that certain types of prescription drugs (brand name drugs where a generic equivalent is available) would not be permitted to be transmitted electronically until federal approval was obtained. Electronic prescriptions are valid for dispensing prescription drugs if they contain all information required by New York State law and they do not have to be on an Official Prescription Form. Pharmacies are required to print and maintain a hard copy of the electronically transmitted prescription for a period of six years. Electronic orders for OTC drugs are also permitted consistent with State Education requirements.

Oral orders- As with faxed prescriptions, oral orders (telephone orders) are permitted for drugs requiring prescriptions and for OTC drugs. Again, a follow-up hard copy of a prescription or order is no longer required except for oral orders for controlled substances and for non-drug supplies including medical and surgical supplies. There are limits on the number of days supply that can be provided for controlled substances ordered orally. Pharmacies must maintain a written record of the telephone order which conforms to DOE requirements. DOH has advised that the use of pharmacy computer generated labels as the only prescription documentation to support an oral order may not be in compliance with the

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relevant Medicaid and DOE requirements. DOH Medicaid regulations (referencing DOE policy) require that the pharmacy maintain a record of the time of the call and the initials of the person both taking the call and dispensing the drug. As with all prescriptions and orders, the pharmacy must make a good faith effort to verify the ordering practitioner's identity, as well as the validity of the prescription or fiscal order where the ordering practitioner is unknown to the pharmacy.

Medical-Surgical Supplies- Generally these supplies (such as incontinence products), when ordered under Medicaid, are ordered on written fiscal orders. The Official New York State Prescription may be used as fiscal orders for these supplies but is not required for these orders. If a fiscal order for these supplies is written on an Official New York State Prescription, pharmacies filling the order (as is the case whenever the Official Prescription is used) must enter the serial number of the prescription on the Medicaid claim form.

General dispensing policy- Medicaid regulations require that the ordering practitioner must document in the patient record support for prescriptions and oral orders. Failure to do so or causing medically unnecessary drugs to be billed to Medicaid can result in an audit disallowance against the ordering practitioner (even though payment is made to the pharmacy). Pharmacists should use caution when overriding a rejected Drug Utilization Review (DUR) conflict. Where issues arise, the prescribing physician should be contacted. It is strongly recommended that the Pharmacist write or electronically store the date and reason for the override.

Generally, pharmacies may not fill an original prescription more than sixty days after it has been written; for controlled substances, the period is thirty days. Finally, serialized stickers used by facilities cannot be accepted on the official prescription form for controlled substances.

Refills- An order may not be refilled unless the Practitioner has indicated the number of allowable refills in the order. No written order for prescription drugs (other than controlled substances) may be refilled more than six months after the date of the original prescription, nor more than five times in the six month period. Special rules apply to controlled substances. Automatic refills of prescription drugs, OTC orders, and medical and surgical supplies are not permitted. A practitioner or pharmacy may contact a Medicaid recipient to ascertain if a refill is necessary. The contact must be recorded by the Pharmacy and maintained in the patient record. It should include the date and time of contact, the name of the recipient or caregiver and the identification of the person initiating the contact.

Maintenance of pharmacy records- State Education requirements generally require the retention of pharmacy records for five years; Medicaid regulations require the retention of records for a period of six years from the date that the care, services or supplies were furnished or claimed, whichever is later. Due to related Medicaid and Medicare fraud control statutes such as federal and state false claims laws, we recommend retention for a ten year period.

Delivery of drugs and DME- The following are requirements for the delivery of drugs, medical surgical supplies and DME:

- All delivery costs are the responsibility of the provider;
- The provider must contact the recipient to ensure that delivery is required. Confirmation of this need must be maintained in the recipient's record;
- The recipient or caregiver must receive delivery and proof of delivery is generally accomplished through signature for receipt of the product.

Further information on this issue is set forth in the DOH Medicaid Update Article of November, 2003.

Medicaid Enrollment- Pursuant to State Education law, all pharmacies are required to have a supervising pharmacist. Pursuant to state Medicaid regulations, supervising pharmacists working in a Medicaid enrolled pharmacy are required to be enrolled as a non-billing Medicaid provider.

National Provider Identification Number (NPI)- As New York State implements NPI, additional requirements may be imposed upon pharmacies, hospitals and ordering practitioners. We expect to address these policy issues in an upcoming Legal Alert. ■

Should you have any questions regarding this Legal Alert, feel free to contact Robert Tengeler. Mr. Tengeler was the former Assistant Medicaid Inspector General with the State Office of Medicaid Inspector General and authored the legislation and companion regulations implementing the Official New York State Prescription Program.

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