



September 12, 2007

Acting Deputy Administrator Herb B. Kuhn  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, MD 21244-1850

Dear Acting Deputy Administrator Kuhn:

We are writing on behalf of the Alliance of State Pain Initiatives (ASPI) to request reconsideration or at the very least delay in implementation, of a new federal mandate that requires prescriptions for Medicaid beneficiaries to be written on tamper-resistant prescription forms. This mandate was signed into law by the President on May 25, 2007 as part of the *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Public Law 110-28)*. The Medicaid prescription form requirement takes effect October 1, 2007.

Although the requirement applies to prescriptions for all types of drugs, we are particularly concerned about prescriptions related to pain control. As a national network of health care professionals and patient advocates dedicated to improving the management of pain, the ASPI has long been committed to assuring that persons have access to therapies that are essential for controlling pain while minimizing the misuse of prescription pain medicines. We are very concerned that the new federal mandate, which is intended to reduce prescription fraud in the Medicaid program, will put Medicaid beneficiaries at risk of not having their prescriptions filled, resulting in a disruption in care and prolonged suffering for persons with pain. Specifically we are concerned about the following:

- **Implementation period too short.** We believe that the few months between enactment and effective dates do not provide adequate time for prescription forms to be printed and distributed to prescribers. We also feel that more time is needed to make practitioners aware of the new law, and for states to provide guidance to practitioners on how to apply the requirements of the new law to their practice.
- **Application of law discriminatory.** Medicaid covers a large share of the neediest, most vulnerable Americans, including low-income pregnant women, parents and children, elderly people, and people with disabilities. Many do not have the resources to obtain health care beyond what is provided by government sponsored health insurance programs. We feel that the application of a tamper-resistant prescription forms requirement to only a certain class of individuals (i.e. Medicaid beneficiaries) is discriminatory and may violate the spirit, if not the letter, of the U.S. Constitution's equal protection clause.

**ALLIANCE OF STATE PAIN INITIATIVES**  
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- **Access to care affected.** Medicaid beneficiaries already face limited access to health care services because of low physician participation due to insufficient reimbursement rates. This new prescription requirement creates another disincentive to physician participation and will further restrict access to timely and appropriate health care.

Thank you for your consideration of these comments. The Alliance of State Pain Initiatives looks forward to working with you to assure that persons who suffer from pain are provided effective and appropriate care.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Grant Ervin". The signature is written in a cursive style and is centered within a light gray rectangular box.

Michelle Grant Ervin, MD  
Chair  
Advisory Council  
Alliance of State Pain Initiatives