

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 19(a)(3) of the District of Columbia Pharmacist and Pharmacy Regulation Act of 1980, effective September 16, 1980, (D.C. Law 3-98; D.C. Official Code § 47-2885.18.01(a)(3)); the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code § 48-901.01); Mayor's Order 98-48, dated April 15, 1998, Section 4902 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731); Section 15 of the District of Columbia Drug Manufacture and Distribution Licensure Act of 1990, effective June 13, 1990, (D.C. Law 8-137; D.C. Official Code § 48-714(a)); and Mayor's Order 98-88, dated May 29, 1998; hereby gives notice of the adoption of the following amendments to Chapter 13 (Prescriptions and Distribution) of Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The purpose of the amendments is to implement the requirement under section 7002(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, effective May 25, 2007, (110 P.L. 28; 121 Stat. 112) regarding the use of tamper resistant prescription pads for written, non-electronic, prescriptions.

A notice of Proposed Rulemaking was published in the *D.C. Register* on December 21, 2007 at 54 DCR 012341. No comments were received from the public in connection with this Notice and no changes have been made. These final rules will be effective upon publication of this notice in the *D.C. Register*

CHAPTER 13 (PRESCRIPTIONS AND DISTRIBUTION) is amended as follows:**A new section 1333 is added to read as follows:****1333 PRESCRIPTION REQUIREMENTS FOR MEDICAID
COVERED SERVICES**

1333.1 Effective April 1, 2008, a written prescription for any drug, including over-the-counter drugs, for a Medicaid fee for service beneficiary shall only be written on tamper resistant prescription pads meeting at least one of the following characteristics:

- (a) The prescription pad contains one or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

- (b) The prescription pad contains one or more industry-recognized features designed to prevent erasure or modification of information written on the prescription by the prescriber; or
- (c) The prescription pad contains one or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

1333.2 Beginning April 1, 2009, a written prescription for any drug, including over-the-counter drugs, for a Medicaid beneficiary shall only be written on tamper resistant prescription pads meeting all of the following characteristics:

- (a) The prescription pad contains one or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;
- (b) The prescription pad contains one or more industry-recognized features designed to prevent erasure or modification of information written on the prescription by the prescriber; and
- (c) The prescription pad contains one or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

1333.3 The requirements of this section shall apply whether Medicaid is the primary or secondary payor of the prescription being filled.

1333.4 Prescription orders transmitted to a pharmacy via telephone, telephone facsimile, or electronic prescription order are exempt from the tamper resistant requirements set forth in §§ 1331.1 and 1333.2 of this chapter.

1333.5 The tamper resistant requirements in § 1333.1 of this chapter do not apply to refill prescriptions of an original written prescription that was presented to a pharmacy before April 1, 2008.

1333.6 The exceptions set forth under Section 1927(k)(3) of the Social Security Act (42 U.S.C.S. § 1396r-8(k)(3)) concerning nursing facilities, hospitals, and other institutional and clinical settings, shall also be an exception to the requirements of this section.

1333.7 In the event a prescription is not submitted on a tamper resistant prescription form meeting the requirements set forth in §§ 1331.1 and 1333.2, a pharmacy may fill the prescription in full as written on an emergency basis as long as the pharmacy receives a verbal, telephone facsimile, electronic, or compliant written prescription within seventy-two (72) hours after the date on which the prescription was filled.

1333.8 Effective April 1, 2008, the Medical Assistance Administration (MAA) shall

only reimburse providers for covered Medicaid outpatient drugs when the written, non-electronic, prescription is executed on a tamper resistant pad meeting the requirements of this section.