

## Long-Term Care Survey Alert

### Enforcement: Update Your Narcotic Pain Medication Policy With This Key Change

#### **Nurses can call in some controlled med prescriptions, if they do this first.**

When nursing home providers protested the DEA's recent crackdown on rules governing controlled pain meds, the agency apparently took heed.

Background: In a more stringent interpretation of the Controlled Substances Act over the past year to 18 months, the DEA had said that only nurses employed by a prescriber could transmit narcotic prescriptions to a pharmacy, observes **Albert Barber, PharmD**, director of pharmacy for Golden Living based in Ft. Smith, Ark. And that, of course, meant nurses employed by nursing facilities couldn't call in phone orders for pain meds in emergency situations. The impact of the change on resident care prompted a congressional subcommittee "listening session" in March (see Long-term Care Survey Alert, Vol. 12, No. 5).

New development: The DEA published a new policy in the Oct. 6 Federal Register, which is now in effect. The policy allows a licensed nurse working in a long-term care facility to act as a prescriber's agent for transmitting orders for Class III, IV, and V scheduled medications to the pharmacy, says Barber.

#### **Be Prepared to Meet This Requirement**

The revised DEA policy includes a "major caveat," cautions Barber. In order for a nurse working in a facility to be considered an "agent" of the prescriber, he or she has to enter into a written, signed agreement with the prescriber, he relays. In addition, the pharmacy has to maintain copies of the agreements on file so the pharmacist knows the nurse transmitting the order is a prescriber's authorized agent, Barber adds. As an agent of the prescriber, the nurse can call in an oral prescription for a Class III, IV, or V narcotic to the pharmacy, if the prescriber provides all elements of a prescription. The nurse acting in that role can also prepare a written prescription for the prescriber's signature and fax that to the pharmacy once it's been signed by the prescriber.

A problem: The Oct. 6 DEA policy doesn't apply to Class II narcotics, such as morphine, oxycodone, and fentanyl, which are most widely used to manage serious pain, says Barber. Thus, prescribers themselves will still have to call in or fax the pharmacy a signed prescription to obtain an emergency supply of Class II narcotics for a patient. "The American Medical Directors Association has serious concerns that the DEA's policy does not resolve the delays that physicians have had in getting Schedule II pain drugs to some residents who urgently need them," wrote **Kathy Wilson, PhD**, director of government affairs for the group, in an e-mail exchange with Eli.

Barber notes that the DEA policy is partially helpful, however, given that a fair number of long-term care residents have moderate pain that can be addressed by drugs like Vicodin, a Class III narcotic.

Another shortfall: The American Society of Consultant Pharmacists (ASCP) had requested the DEA to allow "nursing homes to use medication orders transcribed by the nurse in the resident's medical record as a valid prescription to fax to the pharmacy," says **Lynne Batshon**, director of policy and advocacy for the ASCP.

The DEA policy does not, however, address that. The DEA no longer allows any pharmacy to dispense any controlled medication based on chart orders, she adds. ASCP Views DEA Policy as an Initial Effort The ASCP is pleased that the DEA is "taking some steps in the right direction," says Batshon. But she emphasizes that the professional group sees the policy as a first step with more needing to be done to "close the gap on the potential for delays" in getting patients pain medications.

Also: "On the surface, it's pretty clear that the DEA has concerns about drug diversion in nursing homes," Batshon continues. And ASCP is interested in working with the DEA to learn more about those concerns and find ways "to address them without creating barriers to patient access" to care.

### **Major Overhaul May Be in the Works**

The National Association of Boards of Pharmacy has a task force working on recommendations for completely rewriting the Controlled Substances Act, Barber reports. The task force includes ASCP members and representatives from other organizations, as well as some DEA staffers participating as ex-officio members. "We think a lot of the recommendations will be accepted by the DEA."

Resource: Read the DOJ policy in the Federal Register at [edocket.access.gpo.gov/2010/pdf/2010-2516.pdf](https://edocket.access.gpo.gov/2010/pdf/2010-2516.pdf). The policy includes a sample agreement for the prescriber and designated agent -- see page 6166.