

## Long-Term Care Survey Alert

### LEGAL ISSUES: Don't Be Blindsided by Drug Diversion

Is your nursing facility vulnerable to this all-too-common problem?

Drug diversion can land your nursing facility a spot on the nightly news -- or worse.

Beware: In nursing homes, drug diversion is a form of abuse, "since it deprives the patient of proper medication," warns the Texas Medicaid Fraud Control Unit in materials posted on the Texas Attorney General's Web site.

Diversion can also defraud the Medicaid system, if it pays for medications the patient doesn't receive, the MFCU points out.

Not only that: Federal agencies, including the Food & Drug Administration and Drug Enforcement Agency, are hot on the trail of a growing epidemic of prescription drug diversion in the community involving mostly opioids. Thus, nursing facilities are wise to double their efforts to prevent scheduled narcotics from getting in the wrong hands.

#### Focus on Compliance With the Basics

Audit on a regular basis to make sure nursing staff are complying with narcotic counts, and documenting pain assessments and evaluation of interventions for patients on opioids and other pain medications. When nurses don't do the narcotic count routinely, and a problem with suspected diversion arises, it becomes evident that the count hasn't been done, cautions **Albert Barber, PharmD**, who oversees pharmacy services at four nursing facilities for Golden Living, which is based in Ft. Smith, Ark.

Two nurses should not only do the narcotic count each shift, but also witness each other wasting medication when a patient doesn't require a full dose of a narcotic. "If only one licensed nurse is on a shift, the nurse could lock up the medication and waste it when a second nurse comes on duty on the following shift," advises Barber.

Don't overlook: Two nurses should document destruction of used fentanyl patches, Barber counsels. As part of the count, make sure residents who should have fentanyl patches in place actually do. "We have had a number of incidents reported where people who don't even work in the facility will come in and take all of the patients' patches," warns Barber. "You also want to make sure that a family member isn't taking the patches -- or a resident might be removing them, which means he's not getting pain management." **Beware:** A nurse who doesn't comply with the policies and procedures for two nurses to sign off on the narcotic count can get caught up in an investigation of another nurse's drug diversion, cautions attorney **Paula Sanders**, a partner with Post & Schell in Harrisburg, Pa. For example, a "drug-diverting nurse might say at the end of a very busy shift, 'Don't worry, I counted the narcotics,'" cautions Sanders.

Be Alert to Warning Signs To detect potential diversion, look for patterns across shifts where patients complain of pain more often or where the nurse is giving pain medications more frequently, advises **Nathan Lake, RN, BSN, MHSA**, a long-term care expert in Seattle. The nurse on that shift may be doing a better job of assessing pain -- or patients at night, for example, might experience more pain, he notes. "A QA committee can, however, track pain medication usage" and flag shifts or caregivers that appear to be outliers for some reason.

**Another red flag:** Look closely at a patient who has been doing well on a pain medication who suddenly begins to complain of pain again, advises Lake. Also focus on palliative care and hospice patients to see if they appear to be in pain despite the MAR showing they are receiving high doses of opioids. "It's terrible to think about," but not unheard of for a caregiver to steal a dying patient's painkiller based on the idea that it'd be hard to tell if the patient is in more pain than expected, says **Joseph Bianculli**, an attorney in private practice in Arlington, Va.

#### Take Steps to Reduce Access to Controlled Drugs

Simple interventions can reduce a potential drug diverter's access to controlled drugs. For one, minimize PRN drug supplies on the floor, Barber suggests.

Reasoning: Nurses who divert medications often target PRN doses, in Barber's experience. Thus, if a resident takes only three to four PRN doses of a controlled substance a month, don't order 30 or 60 for the month, he counsels. "If the patient is using a lot of PRNs, then he should be switched to another longer-acting medication." That's not only a better clinical approach for controlling pain -- it also reduces the number of medications available for diversion.

Also focus on procedures for drug deliveries to the floor. A nurse who wants to divert may order a PRN medication from the pharmacy and then take the medication when it arrives on the floor, cautions Barber. "That's why it's a good idea for pharmacies to record the name of the person ordering the medication or have two nurses accept medication deliveries," he suggests.

#### Develop Support Systems

Caregivers who get caught diverting drugs often report that they started the practice in an effort to self-medicate severe stress, insomnia, or untreated pain. Also, in today's economy, financially strapped healthcare staff may be tempted to divert non-controlled drugs, such as an antibiotic, because they can't afford treatment. To prevent those types of scenarios, Golden Living provides employees access to good healthcare and mental health services, including family support services and financial counseling, Barber relays. Someone in the facility focused on wellness should look for the signs of stress in employees, he adds.

For example, maybe someone's spouse lost his job and she is now working two or three jobs. Offer or steer that person to support services provided by the facility and in the community.