

DEA Regulation of Controlled Substances in Nursing Homes, Hospices and Assisted Living Facilities

Issue: The regulations implementing the Controlled Substances Act (CSA) require that all prescriptions for Schedule II-V controlled substances be written, signed by the prescriber, and presented to a pharmacy for fulfillment. In nursing homes, hospices and assisted living facilities, where a resident's physician usually is not physically on-site, nurses for years have played a key role in communicating information on residents' conditions to physicians and other practitioners. This communication usually takes place by telephone, with a nurse acting as the physician's "agent" by recording the physician's verbal order of the needed medications in the resident's clinical record, creating a "chart order," and ensuring that the physician's orders are carried out. Nurses in hospitals operate similarly. Through this process, nurses ensure that medications are acquired timely to meet residents' changing and emergent medical needs.

Under an interpretation adopted in the past several years by the U.S. Drug Enforcement Administration (DEA), which has oversight authority for the CSA, a nurse in a long-term care (LTC) setting (nursing home, assisted living facility, and hospice) is prohibited from serving as an "agent" of a practitioner prescribing a Schedule II-V medication for a LTC resident. Under this prohibition, practitioners cannot rely on LTC nurses to document their prescription orders and transmit them to the pharmacy; instead, the DEA requires the pharmacist to locate and communicate with the prescribing physician in person and obtain a separate, signed "hard copy" prescription order from the prescriber before the pharmacist/pharmacy can dispense the needed controlled substance. The DEA also has ruled that a chart order in a resident's medical record is not considered a valid prescription.

WAHSA Position: Oppose. Either the DEA should reconsider its interpretation of the CSA to permit LTC nurses to serve as "agents" of the prescriber and chart orders to be accepted as valid prescriptions, or legislation should be introduced and adopted which would do the same.

Arguments in Support of WAHSA Position:

- The DEA interpretation of the CSA places nursing facilities in the untenable position of either denying residents their needed pain medications for hours or even days in order to adhere to DEA requirements or violate pain management requirements under nursing home regulations administered by the federal Centers for Medicare and Medicaid Services (CMS).
- These DEA enforcement actions, which have resulted in hefty fines against several pharmacy corporations, threaten sick and dying LTC residents with being left for hours --or even days -- without adequate symptom relief to treat pain, seizures, psychiatric and end-of-life symptoms, among other conditions. Such delays clearly are contrary to good and humane clinical practice.



- Chart orders are particularly necessary for nursing homes and hospices because these facilities admit residents twenty-four hours a day/seven days a week. In Wisconsin, 83% of nursing home admissions are individuals being discharged from hospitals. Many, if not most, of these admissions are people in critical need of pain medications, which hospital physicians cannot prescribe for individuals being discharged to another facility. Since approximately 40% of physicians working in the LTC environment do not have an office-based practice or staff, requiring them to submit an original or faxed prescription necessarily will result in delays getting needed medications to LTC residents.
- On October 6, 2010, the DEA issued a “Statement of Policy,” effective immediately, which in effect revises DEA policy by allowing LTC staff, including nurses, to act as agents of practitioners prescribing Schedule III-V controlled substances. Under this revised policy, the DEA would require an “agent” to be a specific individual, rather than a specific position.
- While a step in the right direction, the new DEA policy falls short in two areas: 1) Schedule II drugs, which includes most narcotic painkillers prescribed for LTC residents, are explicitly excluded from this policy change; and 2) The “agent” designation of an individual rather than a position, i.e., “charge nurse Ann Jones” vs. “charge nurse,” would be an administrative nightmare, requiring a different “agent” for each shift and needless delay if an “agent” were to leave the facility to seek employment elsewhere.
- **The DEA is an agency within the U.S. Department of Justice (DOJ) and Attorney General Eric Holder has given his assurance to Senator Herb Kohl (D-WI), chair of the Senate Special Committee on Aging, that the DOJ will deliver draft legislation to Senator Kohl early in the 112th Congress which will address provider and resident concerns with the DEA controlled substances policy in the LTC setting. We hope that legislation will be introduced soon and passed expeditiously so LTC residents will no longer be forced to needlessly endure agonizing pain because of an ill-conceived regulatory interpretation.**

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of not-for-profit corporations principally serving seniors and persons with a disability. Membership is comprised of 188 religious, fraternal, private, and governmental organizations which own, operate and/or sponsor 195 nursing homes, 14 facilities for the developmentally disabled, 87 residential care apartment complexes (RCAC), 95 community-based residential facilities (CBRF), 114 senior apartment complexes, and more than 300 community service agencies which provide programs such as Alzheimer’s support, adult day care, child day care, home health, hospice, home care, and Meals on Wheels. Together, WAHSA serves 505 not-for-profit nursing home, assisted living, senior housing, and other community-based providers principally serving elderly persons and individuals with a disability. WAHSA members employ over 38,000 people who provide compassionate care and service to over 48,000 individuals each day.

For more information about WAHSA’s public policy positions, please contact the WAHSA staff at (608) 255-7060 or by email: John Sauer, Executive Director (jsauer@wahsa.org); Tom Ramsey, Director of Government Relations (tramsey@wahsa.org); or Brian Schoeneck, Financial Services Director (bschoeneck@wahsa.org).