

Rick Miller
CHAIR
Avamere Health Services Inc.
Wilsonville, OR

Robert Van Dyk
VICE CHAIR
Van Dyk Health Care
Ridgewood, NJ

Angelo S. Rotella
IMMEDIATE PAST CHAIR
Friendly Home
Woonsocket, RI

Gail Clarkson
SECRETARY/TREASURER
The Medilodge Group Inc.
Bloomfield, MI

Neil Pruitt, Jr.
EXECUTIVE COMMITTEE LIAISON
UHS-Pruitt Corporation
Norcross, GA

Lane Bowen
AT-LARGE MEMBER
Kindred Healthcare
Louisville, KY

Richard Kase
AT-LARGE MEMBER
Cypress Health Care Management
Sarasota, FL

William Levering
AT-LARGE MEMBER
Levering Management Inc.
Mt Vernon, OH

Rick Mendlen
AT-LARGE MEMBER
Kennon S. Shea & Associates
El Cajon, CA

Richard Pell, Jr.
AT-LARGE MEMBER
Genesis HealthCare Corporation
Kennett Square, PA

Leonard Russ
AT-LARGE MEMBER
Bayberry Care Center
New Rochelle, NY

Van Moore
DD RESIDENTIAL SERVICES MEMBER
Westcare Management
Salem, OR

Wade Peterson
NOT FOR PROFIT MEMBER
MedCenter One Care Center
Mandan, ND

Howie Groff
NCAL MEMBER
Tealwood Care Centers
Bloomington, MN

James Carlson
ASHCAE MEMBER
Oregon Health Care Association
Portland, OR

Gail Rader
ASSOCIATE BUSINESS MEMBER
Care Perspectives
Phillipsburg, NJ

Bruce Yarwood
PRESIDENT & CEO

MEMORANDUM

TO: State Executives

FROM: Sandra Fitzler
Senior Director, Clinical Services

SUBJECT: Drug Enforcement Administration (DEA): Nursing Home Nurses
Not Seen As The Practitioner's Agent

DATE: April 16, 2009

Background

Recently, the DEA has stepped up enforcement actions against several long-term care (LTC) pharmacies in Ohio. The pharmacies are being cited for common practices that have evolved to meet the needs of LTC patients who receive controlled substance medications (narcotics), i.e. filling facsimile prescriptions from LTC facilities for Class II medications without having the prescriber's required information before the medication order is filled.

The DEA current focus on LTC primarily relates to whether the LTC nurse can act as the agent of the drug prescriber (physician). The DEA has taken a narrow interpretation of the Controlled Substances Act of 1971 and are basing violation on the narrow interpretation.

The DEA is in the process of sending Dear Registrant letters to notify pharmacies about their interpretation of the law and the need to adhere to the Controlled Substances Act to avoid penalty.

Controlled Substance Act

Section 1306.11 Requirement of Prescription states the following:

A pharmacy may dispense directly a controlled substance listed in Schedule II (called C II), which is a prescription drug, only pursuant to a written prescription signed by the practitioner. A prescription for a C II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

The Issues

The DEA interprets chart orders in LTC facilities as not constituting valid prescription orders unless they contain all the information that is required under the Controlled Substance Act. In general, chart orders do not contain the required elements. In addition, the DEA does not recognize the LTC nurse as the agent of the practitioner for dispensing C II medications after the nurse has received the order from the physician.

The narrow interpretation of the law prohibits LTC nurses from dispensing C II medications to patients, where the prescription/medication order was obtained by facsimile and where the pharmacy has not received the prescription by the prescriber (physician) with all the required elements. A valid written prescription requires the following:

1. the full name and address of the patient,
2. the drug name, strength, dosage form, quantity prescribed, directions for use, date prescription written, and
3. the name, address and **registration number** (DEA number) of the prescribing practitioner (personal signature required).

Facsimile Medication Order -The pharmacist can dispense a controlled substance if transmitted to the pharmacy by facsimile only under the following conditions:

1. The prescription must be written either for a resident in a LTC facility or in a Medicare hospice program.
2. The facsimile must meet all of the requirements.
3. In the case of a hospice patient, the practitioner or practitioner's agent must note on the prescription that the patient is a hospice patient.
4. The facsimile must be maintained in the same manner as other prescriptions for controlled drugs.
5. For assisted living facilities and group homes without nursing staff available 24/7, C II medications may only be dispensed with a written, hard copy of the prescription – not a faxed prescription.

Verbal Medication order -The only time a pharmacist can dispense the controlled medication upon the verbal order of the practitioner is in an emergency, where the immediate administration for proper treatment of the patient is needed, and where no appropriate alternative treatment is available and when it is not reasonably possible for the prescribing practitioner to provide a written prescription.

Implications for LTC Facilities

- Nursing care facilities will have to change their medication process for controlled substances to ensure the physician timely submits to the pharmacy, the prescription with all the required elements. We anticipate this will impact the facility's ability to provide pain medication to some patients in a timely manner.
- Nursing facilities will have to work closely with their pharmacy, treating physicians and medical director to ensure everyone is aware of the DEA narrow interpretation of the Controlled Substance Act and have everyone agree on the best method for handling the facility's C II medication orders.

Next Steps

- The American Society of Consultant Pharmacist (ASCP) has been actively advocating for LTC and to ensure that patients receive medication when needed. ASCP has pulled together partners (AHCA, AMDA, hospice, etc.) and has met with DEA to discuss their interpretation of the law and issues around the definition of LTC nurse as the Practitioner's Agent. DEA has agreed to consider the issues for 90 days but according to ASCP, DEA stated that it will be highly unlikely that they will change their position.
- ASCP is currently updating pharmacists about the requirements that DEA will be enforcing.
- ASCP is willing to participate in a webinar for AHCA members to educate Administrators and DONs about the DEA decision and to encourage providers to amend their clinical process to support pharmacy/physician compliance with the law while timely meeting patient medication needs. We will be sending out more information about the webinar in the near future.

Commonly Prescribed Schedule II Controlled Substances

- Analgesics: Codeine, Duragesic patch, Dilaudid, Demerol, Morphine, Methadone, Avinza, Kadian, RMS-Suppository, Roxanol, Eth-Oxydose, Oxycontin, Percocet, and Roxicet.
- Stimulants: Adderall, Dexedrine, Concerta, Metadate, Methylin, Ritalin, and Focalin.