

ISSUE BRIEF



American Health Care Association



National Center for Assisted Living

40-Year Old Law Needs Update To Match Current Practice

Enforcement practices by the U.S. Drug Enforcement Administration (DEA) of decades-old rules and regulations for prescribing and dispensing of controlled drugs are impeding timely access to appropriate medications for seniors in nursing homes, assisted living residences, and hospice care. As a result, patients in pain are suffering needlessly as physicians, nurses, and pharmacists struggle to comply with outdated rules that are out-of-sync with accepted medical practice.

Nursing homes have changed significantly from what used to be considered custodial care facilities. Today, nursing homes often provide shorter-term, rehabilitative care much like hospitals did decades ago. Unlike the hospital, physicians caring for nursing home patients are often not physically present at the facility when a patient is admitted or experiences a change in condition requiring an adjustment in their medications. Furthermore, many prescribers who care for these patients have no office-based practice.

Nurses play a vital role in long term care and hospice in communicating information to the prescriber, documenting the prescriber's orders in the patient's medical record, and in the case of medications, communicating those orders to the pharmacy. Although the *Controlled Substances Act (CSA)* explicitly permits a practitioner to rely on an "agent" to prepare and transmit prescription drug orders, the DEA currently does not recognize any "agency" relationship between a practitioner and a long term care nurse. As a practical matter, this means that practitioners cannot rely on nurses in these care environments to document their orders and transmit those orders to the pharmacy.

Strict compliance with DEA rules and policies adds additional steps that can significantly delay treatment from several hours to several days. During this time, nurses are unable to do their jobs, leaving patients to suffer needlessly. Failure to comply with existing regulatory requirements, including delays in providing a patient/resident with needed pain medication, places the patient/resident at risk for rehospitalization and violates quality of care standards, which can affect the facility's state licensure and federal certification status.

It is extremely important that the rules be updated to account for the realities of medical practice, long term care and the three-way system of communication that occurs across care settings. Legislation amending the *CSA* to recognize nurses as agents for the practitioner for purposes of administering controlled medications would help to alleviate this problem by allowing nurses and physicians to continue to respond quickly to patients' changing medication needs.

Certainly, long term care professionals understand and support the DEA's role in preventing the diversion of controlled pharmaceuticals. While AHCA/NCAL respects and supports DEA's mission to ensure that controlled drugs are not being diverted and are only used for legitimate medical purposes, the needless suffering that patients are enduring demands that a balance be achieved in addressing these legitimate law enforcement concerns without causing harm to patients.

Ask Congress...

- To update the *Controlled Substances Act of 1970 (CSA)* to recognize the long term care nurse acts as "an agent of the prescriber" in documenting, transmitting & communicating orders for controlled substances to the pharmacy.

Key Facts

- Decades-old rules & regulations for prescribing & dispensing controlled drugs are impeding timely access to appropriate medications for seniors in nursing homes, assisted living residences & those in hospice care.
- The *Controlled Substances Act* explicitly permits practitioners to rely on "agents" to prepare & transmit prescription drug orders; yet, DEA does not recognize any "agency" relationship between a doctor & a long term care nurse.

Contact

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