Information Regarding DEA Enforcement Actions Against Long-Term Care Pharmacies

In recent weeks, federal Drug Enforcement Administration (DEA) agents have conducted inspections in several long-term care (LTC) pharmacies in Ohio. The agents are focusing on several areas of concern including:

1. dispensing CII, III, IV and V drugs based upon a chart order faxed by the facility to the pharmacy. DEA does not consider a chart order to meet the legal requirements of a valid prescription order under 42 CFR 1306.21. DEA also does not recognize the LTC nurse as the agent of the prescriber.
2. dispensing III, IV and V drugs upon the oral orders of the LTC nurse, after the nurse has received the order from the physician. Again, the DEA does not recognize the LTC nurse as the agent of the prescriber.
3. using the exception for emergency orders for non-emergencies, including situations where the need for the drug could have been anticipated by the prescriber/pharmacy failing to obtain timely a new prescription.
4. drugs dispensed from a e-box without a valid prescription.

ASCP has been working with Senior Care Pharmacy Alliance (SCPA) and members from Ohio to help develop a multi-pronged strategy to respond to the DEA. First, we developed fact sheets and background materials and immediately scheduled a series of meetings for a delegation from Ohio with key Senators and members of the Congress. We helped engage members of Congress who in turn, have now initiated several contacts with the Agency. Senator Sherrod Brown took ASCP's summary of the issues and sent his own letter to DEA expressing his serious concerns regarding DEA's recent actions. Most importantly, ASCP will be meeting with DEA next week to discuss DEA's recent enforcement focus and how we can move forward with the least amount of disruption to pharmacy operations and patient care.

In addition to the above, we have reached out to American Medical Directors Association (AMDA), American Association of Homes and Services for the Aging (AAHSA), American Health Care Association (AHCA), National Hospice and Palliative Care Organization (NHPCO), and others to educate them on recent DEA actions and to engage them in our response.

We are also working on a brief compliance bulletin to provide you with more detailed information about what you should be doing. We do not plan on finalizing this document until after our meeting with DEA to ensure that we have included the most up-to-date information. Suffice it to say, until we are able to change the Controlled Substances Act, DEA's regulations, and the Agency's policy interpretations, every long-term care pharmacy, long-term care facility, and prescriber must comply with existing law and regulations.

Finally, we have organized a special session on DEA Compliance Issues in Long-Term Care at our Midyear Conference in Orlando on Saturday, May 9, 2009. We have lined up an expert in compliance issues, and DEA has been invited (although not yet confirmed).

ASCP and the entire LTC pharmacy community has worked for years to change DEA's interpretation of law to accommodate long-term care pharmacy practice. ASCP will continue to advocate for policy changes, and will work to seek changes in law and regulation at both the federal and state levels to reflect the needs of LTC pharmacies and the residents served by them.

If you have any specific questions, please contact Claudia Schlosberg, Director, Policy and Advocacy at cschlosberg@ascp.com, or call 703-739-1316