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FOR IMMEDIATE RELEASE
March 24, 2010

AMDA Provides Written Testimony for Senate Hearing about DEA Regulations and their Impact on Pain Management in Long Term Care

Columbia, MD – The American Medical Directors Association (AMDA) provided written testimony today to the Senate Special Committee on Aging. Speaking at the hearing entitled, “The War on Drugs Meets the War on Pain: Nursing Home Reform Residents Caught in the Crossfire,” Jonathan Musher, MD, CMD, AMDA Past President and AMDA Foundation Immediate Past Chair, discussed the association’s concerns about recent changes to Drug Enforcement Administration (DEA) controlled substance regulations and their impact on pain management for nursing facility residents.

“Over the past year, we have received many phone calls and e-mails from our state chapters and physician members concerning DEA policy stating that a nurse is not viewed as an agent of the provider,” said Dr. Musher. He added, “As a result, physicians are being required to bypass giving a class medication order to a nurse and give that order directly to a dispensing pharmacist. We fear that recent enforcement activities of the DEA threaten critical discussions between the nurse and physician on behalf of the residents, as well as the medication management process—a system that has had safety checks and balances for quite some time and has helped patients receive timely administration of needed medications.”

Dr. Musher expressed AMDA’s concern that recent DEA actions could threaten the team approach to care in nursing facility. He said, “These actions would affect the quality of patient care, since the DEA is no longer recognizing the nurse as an agent of the physician in the long term care setting.” He stressed that “these actions are causing the delay of the receipt of needed pain medications in the nursing home. Frail vulnerable elders are in pain.” Dr. Musher concludes, “How did we get to the point where we have to comply with paperwork that results in sacrificing patient safety and comfort? A doctor’s first charge is ‘to do no harm’. These regulations cause us to go against that most basic of creeds.”

Every physician must apply for and have an active DEA license in order to prescribe controlled substances. Additionally, DEA licensing is monitored by both the nursing facility and its medical director. Not only does the medical director ensure that any physician prescribing a controlled substance has an active DEA license as part of the physician credentialing process. Additionally, the nursing home is made aware of physicians who do not have a DEA license and will not accept a controlled substance prescription from an unlicensed physician. A second check currently is in

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place at the pharmacy dispensing level, where pharmacists will check that the prescribing physician has an active DEA license before dispensing a controlled substance.

“DEA enforcement actions are causing delays in care,” said Dr. Musher. He added, “Our physicians are reporting delays in getting medically needed prescriptions to the patient, thus causing unnecessary pain and suffering. Our physicians are willing to take the steps the DEA has requested; however, these added steps are delaying the dispensing and receipt of medications and interfering with the checks and balances already in place in the nursing facility setting.”

Dr. Musher concluded, “AMDA believes that nurses should be viewed as the agent of the provider. This would continue to allow the important dialogue between the physician and the nurse, which is essential for proper care and treatment. It also would allow for the necessary checks and balances regarding ordering, receiving, and administering controlled substances to the physicians under our care.”

"As patients transition from the hospital to the nursing home, one area that can help improve the quality of patient care and prevent costly hospital readmissions is timely access to urgently needed pain medications," said AMA Board Chair Rebecca Patchin, MD. She added, "The AMA is concerned that regulatory impediments are obstructing timely access to pain medication, which is bad for patients and bad for our health care system as we work to improve care coordination and reduce health care costs. The administration and Congress should quickly solve this problem so that patients do not have to suffer needlessly."

This is an ongoing priority issue for AMDA. In May 2009, representatives from the association and other long term care stakeholders met with Food and Drug Administration (FDA) agents to discuss the issue of nurse as agent. During that meeting, AMDA stressed that the FDA's interpretation of "emergency situation" should be consistent with the Centers for Medicare & Medicaid Services' interpretation of what constitutes quality of care with respect to pain management in the long term care setting. They also mentioned CMS' F-Tag 309, which states that residents must be given rapid relief of "excruciating pain."

AMDA also worked with Senator Herb Kohl (D-WI) to draft the Long-Term Care Patients' Access to Medically Necessary Controlled Substances Act of 2009. And earlier this year, AMDA Past President Jonathan Musher, MD, CMD, took Senate Aging Committee staff on a nursing facility tour. Dr. Musher, along with David Nace, MD, CMD, discussed with the staffers DEA's authority over physician prescribing practices. AMDA supports the introduction and passage of the Long-Term Care Patients' Access to Medically Necessary Controlled Substances Act of 2009 and similar legislation.

Earlier this year, AMDA met with the American Medical Association, American Academy of Hospice and Palliative Medicine, American Academy of Family Physicians, American Geriatrics Society, and American Osteopathic Association to address DEA issues. In February, the group sent a letter the U.S. Department of Justice stressing the need to resolve this concern.

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The AMDA House of Delegates recently passed Resolution F 10, “Recognition of Nurse as Agent of the Prescriber in LTC Settings.” The AMA has passed similar policies.

The American Medical Directors Association (AMDA) is the national professional association of medical directors, attending physicians, and other professionals practicing long term care medicine committed to the continuous improvement of patient care. The organization provides education, advocacy, information, and professional development for medical directors and other practitioners from various disciplines working together to deliver quality long term care. www.amda.com

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