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April 12, 2011

Cathy A. Gallagher
Acting Chief, Liaison and Policy Section
Office of Diversion Control
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, VA 22152

Dear Ms. Gallagher:

On behalf of the undersigned organizations, we are writing to follow-up to a November 5, 2010, letter responding to the Drug Enforcement Administration's (DEA) October 6, 2010, Statement of Policy entitled "Role of Authorized Agents in Communicating Controlled Substance Prescriptions to Pharmacies." At the time, we recommended that an agent be allowed to represent the prescriber for Schedule II controlled substances when transmitting the prescription orally. Nearly five months have elapsed since we last wrote to you and we have seen no action taken by the DEA to allow an agent to represent the prescriber for Schedule II controlled substances.

To reiterate some of our previous statements about this issue, it is important to note that diversion of controlled substances via nurse-falsified verbal orders is a vanishingly rare phenomenon. The current standard of care, state regulations, and pharmacy regulations require all verbal orders to be reduced to writing by a nurse and then be transmitted to the pharmacist – that is a verbal order must be recorded in the residents chart, which ultimately is reviewed by the attending physician and other nursing facility staff – thus making the possibility of diversion negligible. Hence, if a nurse were to call in a counterfeit order, the prescriber would know it within a matter of days when s/he received the telephone order to sign.

As an additional protective layer, there has to be a written order within the orders section of the chart—which the nurse typically must transmit to the pharmacy via facsimile in order to receive the medication—and which the prescriber must review at the time of the routine regulatory visit when evaluating the overall plan of care. It seems that this whole enforcement strategy is based on a scenario that in actual fact has minimal risk for diversion of medications, and great risk for harming patients.

We are eager to work with the DEA to help identify strategies to address concerns. Should you have any questions regarding our comments please contact, Kathleen Wilson, PhD, AMDA Director of Government Affairs, at kwilson@amda.com or 410-740-9743.

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