



## **DRUG DIVERSION IN NURSING FACILITIES**

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It is important for nursing facilities to implement a written policy and procedure addressing drug diversion, and to educate and train staff members on this policy. The failure to act promptly and properly following an incident of drug diversion could potentially expose a nursing facility to both government sanctions and liability for any harm done to its residents.

### **Defining “Drug Diversion”**

A drug diversion includes the loss or theft of a dangerous drug. For the purposes of Ohio law, the term “dangerous drug” basically includes any drug that requires a prescription to dispense. A sub-category of dangerous drugs is “controlled substances,” which have been identified by the federal Drug Enforcement Administration (DEA). Controlled substances tend to be drugs subject to abuse, such as narcotics. Generally speaking, under Ohio law, all controlled substances (e.g. Valium) are dangerous drugs, but not all dangerous drugs (e.g. antibiotics) are controlled substances.

The terms “loss” and “theft” should be interpreted broadly. For instance, a dangerous drug could be stolen from a nursing facility by a visitor, or a nurse could administer a dangerous drug to him/herself instead of administering it to the resident for whom it is intended. Both of these examples constitute “theft” of the drug.

It is important to note that drug diversion does not include the intentional destruction of drugs that have expired, been damaged or contaminated, etc. Such destruction should be carried out by the pharmacist in charge in accordance with the State Pharmacy Board’s rules pertaining to drug destruction.

### **Responding to a Drug Diversion**

Notification of Appropriate Authorities. If drugs are either stolen or missing in a nursing facility, the incident should be immediately reported to the pharmacist from the pharmacy that dispensed the drugs. Upon notification, the pharmacist may as appropriate (1) notify the Ohio State Board of Pharmacy of the drug diversion, using the Board’s specified forms and procedures; and (2) notify the DEA.

In all cases where the theft of drugs is a possibility, the nursing facility should immediately notify the



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local law enforcement agency, so that an investigation may commence immediately. In addition, if the diversion is caused by the conduct of a registered or licensed nurse, then, if the nursing facility is the employer of that nurse, it is required to report the incident to the Ohio State Board of Nursing, and in no event should that nurse be permitted to continue to conduct medication passes to residents.

Once the required notifications have been made to the appropriate authorities, the nursing facility should be prepared to cooperate with these entities in their subsequent investigation of the drug diversion.

Notification of the Resident's Physician and Family. Depending upon the particular circumstances of the diversion, other notification requirements may apply, such as notifying the resident's family and/or physician. For example, if, as a result of the drug diversion, the resident does not receive the proper amount of medication and the resident is harmed, experiences a significant change in condition, or requires an alteration in treatment, then the nursing facility is required to immediately notify the resident's physician and the resident's legal representative or an interested family member. Even when notification is not legally required, notification to the physician and family member is recommended from a risk management perspective.

Internal Investigation and Response. It is also important from a survey and enforcement standpoint that all suspected incidents of drug diversion be properly documented and investigated. When residents have missed one or more medications, they should be assessed and appropriately treated.

Reimbursement Considerations. It is generally illegal to bill Medicare, Medicaid or a private payor for items or services that were not actually provided. If a nursing facility discovers a drug diversion, it should investigate whether the drugs that were diverted have been billed to any government or private payor. If billing has occurred, the nursing facility or independent pharmacy, as applicable, should process a refund.

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