

The DEA Proposes Schedule II Substance Rule

Brian L. Buchanan, JD

The DEA published a Notice of Proposed Rulemaking on September 6, 2006 that, if made final, would allow physicians to provide individuals with multiple prescriptions for the same Schedule II substance at one time, to be filled sequentially, allowing the patient to receive up to a 90-day supply. This rule would overturn an earlier clarification issued by the DEA that stated that preparing multiple prescriptions on the same day with instructions to fill on different dates is equivalent to illegally authorizing refills of a Schedule II controlled substance.

Notably, regardless of whether a physician is allowed to issue multiple prescriptions for a Schedule II substance on the same day, the DEA has stated that a patient is not necessarily required to see their physician every month to receive a new prescription. As long as the physician properly determines there is a legitimate medical purpose for the patient to be prescribed

the controlled substance and the physician is acting in the usual course of professional practice, it can be appropriate for the physician to mail the prescription to the patient or pharmacy. Of course, due to the potential for misuse or diversion of Schedule II substances, physicians must use the utmost care in determining whether patients should be seen in person each month.

There are no federal or state limits on the number of days worth of a Schedule II substance that a physician may prescribe (the Wisconsin limit of 34 days was repealed in 2002), but many insurance carriers refuse to authorize payment for controlled substances in excess of a 34-day supply. If the proposed rule becomes final, physicians will be able to issue multiple prescriptions on the same day that can be filled sequentially, providing the patient with up to a 90-day supply. Each prescription (other than the first prescription, if the practitioner intends for that prescription to be filled immediately) should indicate the earliest date on which a pharmacy may fill that particular prescription. However, pharmacists must continue to comply with Wis. Admin. Code § Phar 8.05(4), which states that a prescription

for a Schedule II substance may not be dispensed more than 60 days after the date of issue on the prescription order.

For now, physicians should avoid providing multiple prescriptions for the same Schedule II substance at one time, because the proposed rule has not been finalized and physicians risk being in violation of the prohibition on refilling Schedule II prescriptions until the rule is final. However, physicians are currently free to mail Schedule II prescriptions without an office visit, as long as the physician determines there is a legitimate medical purpose for the prescription, the physician is acting in the usual course of professional practice, and there is no significant risk of theft of the prescription from the mail.

The DEA Notice of Proposed Rulemaking can be viewed in its entirety on the Internet at: www.deadiversion.usdoj.gov/fed_regs/rules/2006/fr0906.htm.

The DEA will update its Practitioner's Manual to reflect the proposed rule if and when it becomes final. The relevant section of the Practitioner's Manual that will reflect this change can be found on the Internet at: www.deadiversion.usdoj.gov/pubs/manuals/pract/section5.htm.

Author Affiliation: Wisconsin Medical Society.

Corresponding Author: Brian L. Buchanan, JD, Wisconsin Medical Society, 330 E Lakeside St, Madison, WI 53715; phone 608.442.3800 or 866.442.3800; fax 608.442.3802.

Wisconsin Medical Journal

The mission of the *Wisconsin Medical Journal* is to provide a vehicle for professional communication and continuing education of Wisconsin physicians.

The *Wisconsin Medical Journal* (ISSN 1098-1861) is the official publication of the Wisconsin Medical Society and is devoted to the interests of the medical profession and health care in Wisconsin. The managing editor is responsible for overseeing the production, business operation and contents of the *Wisconsin Medical Journal*. The editorial board, chaired by the medical editor, solicits and peer reviews all scientific articles; it does not screen public health, socioeconomic or organizational articles. Although letters to the editor are reviewed by the medical editor, all signed expressions of opinion belong to the author(s) for which neither the *Wisconsin Medical Journal* nor the Society take responsibility. The *Wisconsin Medical Journal* is indexed in Index Medicus, Hospital Literature Index and Cambridge Scientific Abstracts.

For reprints of this article, contact the *Wisconsin Medical Journal* at 866.442.3800 or e-mail wmj@wismed.org.

© 2007 Wisconsin Medical Society