



## **SUPPORT Act – Controlled Substance Disposal**

To: Provider Members  
From: NHPCO Regulatory Team  
Date: April 9, 2019

### **Summary at a Glance**

While the federal SUPPORT Act allows certain hospice employees to handle controlled substances and assist families with onsite disposal at home, there have also been many questions about how hospices should implement this new law. The FAQs developed below will provide guidance to hospice providers to comply with the new law, until further guidance is developed by the DEA.

The federal SUPPORT Act, a major piece of legislation aimed at addressing the opioid epidemic, became law in late 2018. It included a provision to amend the Controlled Substances Act (CSA) to allow certain hospice employees to handle controlled substances in order to assist patients and families with onsite disposal of them under specific circumstances.

This provision became effective when the legislation was signed into law, but the language in the legislation leaves a number of questions unanswered. NHPCO has been in contact with the Drug Enforcement Administration (DEA) and is seeking clarification on several issues. At this point the DEA has not issued regulations or any further guidance regarding this provision, and they have indicated that it may be some time before they are able to do so. Therefore, hospices are free to change their policies and procedures to allow certain employees to assist with disposal of controlled substances, consistent with the terms of the SUPPORT Act, but they should be mindful that changes may be necessary when further direction is provided by DEA.

The SUPPORT Act also requires the Government Accountability Office (GAO) to conduct a study and issue a report on the requirements and challenges faced by hospice programs regarding management and disposal of controlled substances in the home. This report, and any recommendations for legislative or administrative action, is to be submitted to Congress within 18 months after enactment of the law.

Below are FAQs to provide guidance on what the law says:

### **Are hospices now required to dispose of patients' controlled substances?**

- No, the SUPPORT Act permits, but doesn't require, hospices to develop policies and procedures to allow certain hospice employees to assist with controlled substance disposal onsite under certain circumstances without being DEA registrants. Hospice employees are not subject to the rules applicable to DEA registrants.
- Hospices can decide whether they want to allow qualified employees to assist families with disposal, or they can continue to instruct patients and families on options and methods of disposal.

### **Who can assist with disposal?**

- The law specifically allows physicians, physician assistants, and nurses who are employed by (or in the case of physicians, under contract with) the hospice to assist with disposal if they are acting within the scope of their employment and have completed hospice program training regarding disposal of controlled substances in a secure and responsible manner.
- The law also allows disposal by "other persons" employed by the hospice who are "licensed to perform medical or nursing services by the jurisdiction"; however, in the absence of guidance from DEA it's unclear what other categories of licensed hospice employees might meet this criteria.

### **When can these hospice employees assist with controlled substance disposal?**

- The hospice employees may handle controlled substances for the purpose of onsite disposal after the death of a hospice patient, or if the drug has expired.
- If the hospice employee is the patient's physician and they are a DEA registrant, they may also dispose of the drugs onsite when a controlled substance is no longer needed because the patient's plan of care has been modified.

### **What is the hospice required to do?**

The law applies to employees of a "qualified hospice program", allowing them to assist hospice patients and families with controlled substance disposal onsite. This means:

- The hospice must have written policies and procedures for assisting in the disposal of controlled substances, and must provide patients and families with a copy of them at the time the controlled substances are first ordered.

- The hospice is required to discuss these policies and procedures with the patient and family in a language and manner they understand, to ensure they're educated regarding safe disposal of controlled substances, and must document in the patient's record that these policies and procedures were provided and discussed.
- Following the disposal of the controlled substances, the hospice must document in the patient's clinical record: the type of controlled substance, dosage, dosage form (i.e. tablet, patch, vial, etc.), route of administration, and quantity disposed of, and the time, date and manner of disposal.

### **What about State law?**

- The SUPPORT Act says it should not be construed to prevent a State or local government from imposing additional controls or restrictions relating to the regulation of the disposal of controlled substances in hospice care or hospice programs.
- NHPCO is aware that a number of states have adopted a wide variety of laws, regulations and policies regarding disposal of controlled substances by hospices, but pending direction from DEA, we're unable to provide guidance on reconciling those state laws with the provisions of the SUPPORT Act. Hospices may want to contact relevant state agencies and/or the DEA office in the state for guidance.

### **What methods of disposal are required?**

The SUPPORT Act does not directly address methods of disposal, and we expect clarification from DEA on this issue in the future. However, when we spoke to DEA personnel in January they stated that since hospice personnel are not required to be DEA registrants and would be assisting "ultimate users" (patients and their family members authorized to dispose of drugs after the patient's death) who would otherwise be responsible for disposal, the disposal options currently available to "ultimate users" also would apply to hospice personnel in this role. Therefore, NHPCO believes authorized hospice personnel are not required to comply with the rules applicable to DEA registrants, or to use disposal methods that render the controlled substances "non-retrievable" under DEA standards.

DEA stated in their 2014 final rule regarding disposal of controlled substances, "Ultimate users may continue to dispose of their own pharmaceutical controlled substances in the manner recommended by other Federal and State agencies, such as the FDA, Office of National Drug Control Policy, and EPA. The non-retrievable standard is only applicable to inventoried controlled substances (i.e., a registrant's stock) and collected controlled substances (i.e., substances collected from ultimate users by authorized collectors) to be disposed of by registrants... The non-retrievable standard does not apply to non-registrants."

As noted, this guidance is based on the language in the SUPPORT Act and the information available to NHPCO at this time and developed in consultation with NHPCO's outside legal counsel at Hogan Lovells

and pharmacists in the NCHPP Pharmacist section. Additional guidance from DEA is expected in the future, but hospices are free to implement disposal policies consistent with the law.

Members with questions should email [regulatory@nhpco.org](mailto:regulatory@nhpco.org).

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