# Partners in Integrity

## What Is a Prescriber's Role in Preventing the Diversion of Prescription Drugs?

DEPARTMENT OF HEALTH & HUMAN SERVICES · USA

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## Content Summary

Drug diversion is the illegal distribution or abuse of prescription drugs or their use for unintended purposes. The diversion of prescription drugs occurs at every point as prescription drugs are distributed from the manufacturer to wholesale distributors, to pharmacies, and ultimately to the patient. Drug diversion can result in drug addictions, overdoses, drug-related emergency room visits, and death and has contributed to a significant increase in substance abuse treatment admissions.

Cases of drug diversion vary widely, but the most common types include patient diversion, doctor shopping, illegal Internet pharmacies, drug theft, prescription pad theft and forgery, and illicit prescribing. The U.S. Drug Enforcement Administration (DEA) recognizes five classes of drugs that are frequently abused: narcotics, stimulants, depressants, hallucinogens, and anabolic steroids.

Physicians and other providers may be involved in drug diversion activities, unknowingly or knowingly, because it is not always clear whether a patient is seeking drugs for illicit purposes (a drug-seeking patient). A prescriber can take several precautions to avoid being taken advantage of by drug-seeking patients. Recommended clinical practices include protecting access to prescription pads, adhering to strict refill policies, and thoroughly documenting when prescribing narcotics. Prescribers can also curb drug diversion by adhering to prescribing principles for opioids and other controlled substances.

The Affordable Care Act has resulted in significant changes to Medicaid, Medicare, and other health care programs. These changes include more stringent penalties for submitting false statements and false claims, including the submission of knowingly false information related to the ordering or prescribing of prescription drugs. Attempting to obtain a controlled substance by misrepresentation, fraud, forgery, or deception is a felony in most States and punishable by a prison term and fines.

Physicians and other prescribers often have the first opportunity to identify, control, and report drug diversion. If a prescriber suspects that drug diversion has occurred, the activity should be documented, and a report should be made. Notify the U.S. Department of Health and Human Services, Office of Inspector General; local law enforcement; or local fraud alert networks of suspected drug diversion. To report theft or loss of controlled substances, notify the DEA.

## What Is Drug Diversion?

Drug diversion is the illegal distribution or abuse of prescription drugs or their use for purposes not intended by the prescriber[1] (for example: recreation, addiction, or financial gain). This may include "deflection of prescription drugs from medical sources into the illegal market."[2] The diversion of prescription drugs may occur at any point as prescription drugs are distributed from the manufacturer to wholesale distributors, to pharmacies, and ultimately to the patient.[3] Members of the medical profession may also be involved in diverting prescription drugs for recreational purposes, relief of addictions, monetary gain, self-medication for pain or sleep, or the alleviation of withdrawal symptoms.

Drug diversion can result in drug addictions, overdoses, drug-related emergency room visits, and death. Drug diversion contributed to a fourfold increase in substance abuse treatment admissions from 1998 to 2008 for individuals ages 12 and over.[4] According to the Centers for Disease Control and Prevention, "since 2000, the age-adjusted drug poisoning death rate more than doubled, from 6.2 per 100,000 in 2000 to 13.1 per 100,000 in 2012."[5] In addition to these disturbing statistics, nonmedical use of pharmaceuticals accounted for more than 1.2 million emergency department visits in 2011, according to the Drug Abuse Warning Network (DAWN). This represents about one-half of all emergency department visits.[6]

The latest data available from the National Highway Traffic Safety Administration shows that of the fatally injured drivers reported in 2009, 3,952 tested positive for drug involvement. These deaths represented 18 percent of all fatally injured drivers.[7] In 2012, the Substance Abuse and Mental Health Services Administration (SAMHSA) examined the use of prescriptions for nonmedical purposes and estimated that for ages 12 and older, 1.8 million persons initiated use of pain relievers, 1.4 million initiated tranquilizers, 676,000 initiated stimulants, and 166,000 initiated sedatives for nonmedical purposes.[8]

The U.S. Government Accountability Office (GAO) issued a report in September 2009 related to controlled substance fraud in Medicaid programs in five selected States.[9] The GAO found that, in these States, tens of thousands of Medicaid beneficiaries and providers were involved in potentially fraudulent or abusive purchases of controlled substances through Medicaid programs. Doctor shopping in these five States resulted in $63 million in Medicaid payments for prescriptions alone, and prescriptions were filled for more than 1,800 beneficiaries who were deceased. In addition, the GAO found that Medicaid paid more than $2 million in 2006 and 2007 for prescriptions for controlled substances that were written or filled by 65 providers barred from or excluded from Federal health care programs.

## What Are the Most Common Types of Drug Diversion?

### Table 1. Common Methods of Prescription Drug Diversion[10]

| Diversion Method | Definition |
|---|---|
| Selling Prescription Drugs | Patients and other individuals selling prescription drugs that were obtained legally |
| Doctor Shopping | Soliciting multiple physicians using a variety of false pretenses to receive prescriptions for controlled substances |
| Illegal Internet Pharmacies | Rogue websites under the guise of legitimate pharmacies that may provide controlled substances to individuals without prescriptions and evade State licensing requirements and standards by operating across State and international borders |
| Drug Theft | Thefts may occur at any step of the prescription drug supply chain—from a manufacturer to a patient or stealing from relatives, friends, or health care professionals (for example: nurses, doctors, pharmacists, and other providers) |
| Prescription Pad Theft and Forgery | Printing or stealing prescription pads to write fraudulent prescriptions or altering a prescription to obtain an unauthorized quantity of prescribed drugs |
| Illicit Prescribing | Providing unnecessary prescriptions or prescribing larger quantities of tablets or capsules than what are medically necessary—commonly known as "pill mills" |

Common methods of prescription drug diversion vary widely (Table 1). For example, an individual may share pain medication with a family member to help alleviate pain or may steal a prescription pad to obtain drugs illegally. Physicians and other providers may be involved in drug diversion activities unknowingly because it is not always clear when a patient is seeking drugs under false pretenses. Drug diversion may also occur when a provider is actively involved in the intentional prescribing of controlled drugs for illegal purposes. For example, a physician was charged in August 2010 for prescribing oxycodone to patients who then resold the drugs to third parties. In turn, those third parties distributed more than 11,000 oxycodone pills in a scheme resulting in $1 million in claims to the Medicaid program.[11] In December 2012, the physician was sentenced to 36 months in prison after pleading guilty to charges. The U.S. Attorney involved stated: "Like heroin, oxycodone is a powerful, highly addictive, and potentially lethal drug. In the proper hands, it can play an important role in pain management, but [this doctor] saw an opportunity to profit from the drug's popularity with recreational users. By writing bogus prescriptions that were filled using Medicaid dollars, she not only engaged in drug trafficking and fraud, she also endangered users of becoming addicts and harming themselves through drug abuse. She violated the central tenet of being a doctor—to first do no harm—and cheated an already-strapped Medicaid system out of almost a million dollars."[12]

Drug diversion in the Medicaid program affects more than the cost of prescription drugs. Additional costs can often occur related to doctor's visits, emergency treatment, rehabilitation centers, and other health care needs. In 2011, DAWN reported that 35 percent of drug-related emergency department visits involved the nonmedical use of pharmaceuticals alone.[13]

## What Are the Drug Classes With the Highest Potential for Drug Diversion and Abuse?

The U.S. Drug Enforcement Administration (DEA) categorizes certain drugs as controlled substances depending on the drug's intended medical use as well as the potential for abuse/dependence: anabolic steroids, depressants, hallucinogens, narcotics, and stimulants. The National Institute on Drug Abuse (NIDA) and DEA have identified prescription drugs with a high potential for diversion and abuse, and these are summarized in Table 2.

**Table 2. Drug Classes With a High Potential for Diversion and Abuse[14, 15]**

| Drug Class | Examples of Drugs Within a Drug Class |
|---|---|
| Anabolic Steroids | Methyltestosterone, testosterone |
| Central Nervous System Depressants | Barbiturates: pentobarbital<br>Benzodiazepines: alprazolam, diazepam |
| Hallucinogens | Ketamine |
| Opioids | Diphenoxylate, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone |
| Stimulants | Amphetamine, dextroamphetamine, methamphetamine, methylphenidate |

## What Can Clinical Practices Do to Minimize Drug Diversion?

A prescriber should take precautions to avoid being taken advantage of by drug-seeking patients. Precautions include:

- Exercising caution with patients who use or request combination or "layered" drugs for enhanced effects (for example: anti-psychotics with opioids or benzodiazepines);
- Documenting thoroughly when prescribing narcotics or choosing not to prescribe;
- Protecting access to prescription pads;
- Keeping a DEA or license number confidential unless disclosure is required by State law;
- Ensuring that prescriptions are written clearly to minimize the potential for forgery;
- Moving to electronic prescribing so that paper prescriptions are not required;
- Adhering to strict refill policies and educating office staff;
- Using State Prescription Drug Monitoring Programs (PDMPs), where available, to monitor patient prescribing before refilling or adding new medications;
- Referring patients with extensive pain management or prescription controlled medication needs to specialized practices;
- Communicating with pharmacists or other providers, as well as pharmacy benefit managers, and collaborating with them when suspicious behaviors are observed;
- Collaborating with pharmacy benefit managers and managed care plans as they seek to determine the medical necessity of prescriptions for controlled substances; and
- Educating patients on proper disposal of controlled substances, including taking any unused medications to their local pharmacy or hospital, or returning them to the prescriber. For further information regarding disposal of medications visit: http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/EnsuringSafeUseofMedicine/SafeDisposalofMedicines/ucm186187.htm on the U.S. Food and Drug Administration website.

## Which Prescribing Principles Can Curb the Diversion of Drugs With High Potential for Diversion and Abuse?

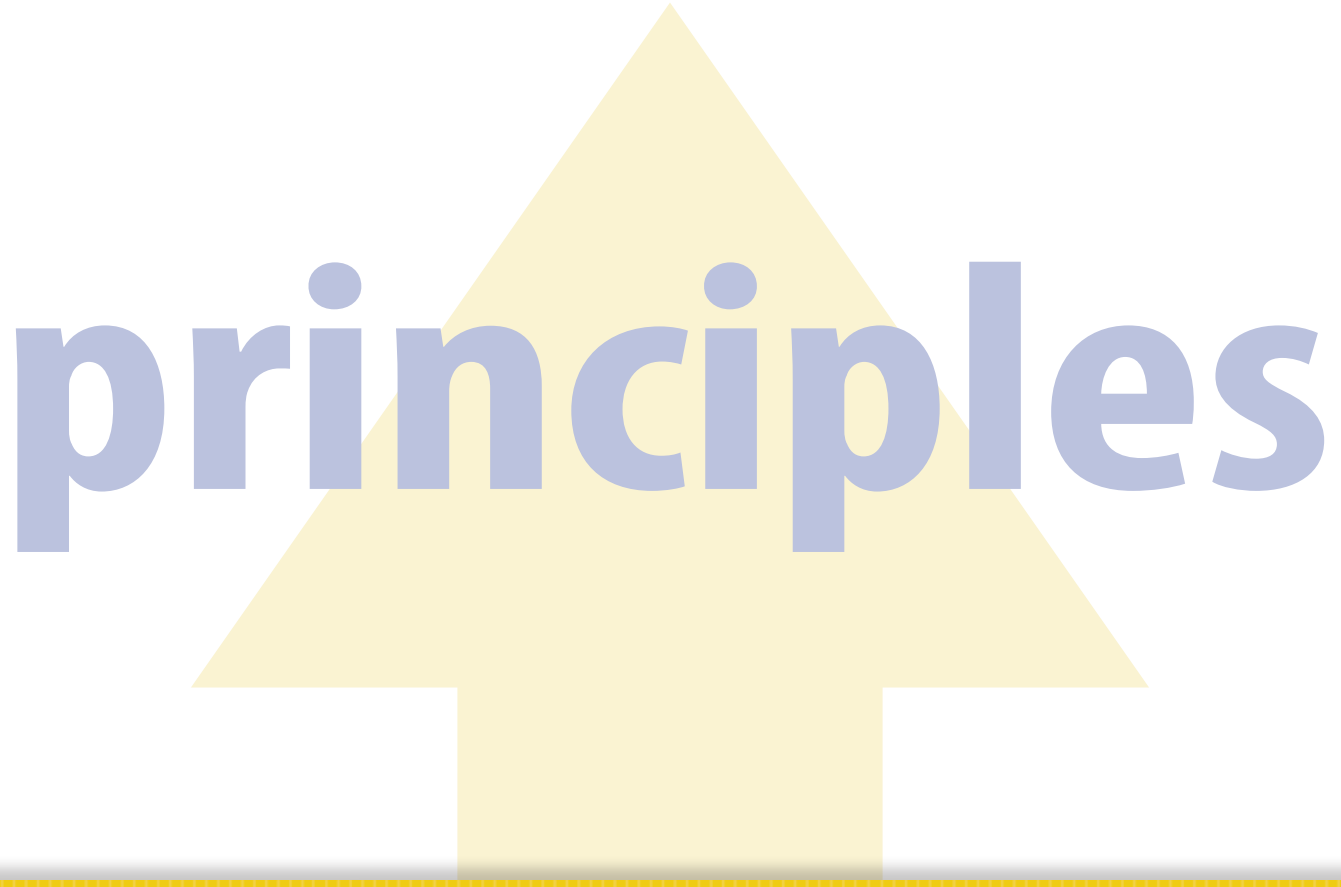
Prescribers can curb drug diversion by adhering to prescribing principles for opioids and other controlled substances, such as:

- Completing a full evaluation and assessment to verify the need for pain medication;
- Requesting a report of a patient's medication history from the State PDMP, where available, before prescribing opioids to patients;
- Screening for substance abuse and asking about the medications a patient is taking and why;
- Prescribing opioids only if alternative therapies do not deliver adequate pain relief;
- Using pain assessment tools to monitor the effectiveness of controlled substances; and
- Seeking a consult from a pain or other specialist for doses of more than 120 milligram equivalents of morphine or other opioid derivative Schedule II drugs per day without substantial improvement in pain and function.

For more information on opiate risk assessment and screening tools visit:

http://www.prescriberesponsibly.com/sites/default/files/pdf/risk/Opioid%20Risk%20Tool.pdf

http://www.painmed.org/sopresources/clinicaltools/tools-forms/



## What Is the Impact of the Affordable Care Act, and What Are the Penalties for Drug Diversion?

The Affordable Care Act has resulted in significant changes to Medicaid, Medicare, and other health care programs.

These changes include more stringent penalties for submitting false statements and false claims, which includes the submission of knowingly false information related to the ordering or prescribing of prescription drugs. The Affordable Care Act requires that State Medicaid agencies suspend payments automatically for physicians and other providers against which there are credible allegations of fraud. In addition, if providers are terminated for cause by Medicare or any Medicaid agency, they must be terminated by Medicaid and the Children's Health Insurance Program (CHIP) in all States.[16]

Attempting to obtain a controlled substance by misrepresentation, fraud, forgery, or deception is a felony in most States and punishable by a prison term and fines. In addition, the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG) uses a range of law enforcement tools that can impose various legal sanctions and actions on physicians and other providers, such as recoupment, restitution, civil monetary penalties, suspension or loss of provider license, exclusion from participation in Medicaid and other Federal health care programs, and imprisonment.

## How Should Suspected Drug Diversion Be Reported?

If a prescriber suspects that drug diversion has occurred, the activity should be documented, and a report should be made. The agencies that should be notified for suspected drug diversion include:

- Local law enforcement and local fraud alert networks;
- DEA, for reporting theft or loss of controlled substances, at https://www.deadiversion.usdoj.gov/webforms/dtlLogin.jsp on the DEA Office of Diversion Control website; and
- HHS-OIG, by calling 1-800-HHS-TIPS (1-800-447-8477) or TTY 1-800-377-4950 or by visiting https://forms.oig.hhs.gov/hotlineoperations/ on the HHS-OIG website.

## Additional Resources

- For information on fraud prevention and detection compliance guidance, visit http://oig.hhs.gov/fraud/ on the HHS-OIG website.
- For more information on drug diversion, visit http://www.deadiversion.usdoj.gov on the DEA Office of Diversion Control website.
- For more information and statistics on the prescription drugs of abuse, visit http://www.drugabuse.gov/drugs-abuse/prescription-drugs on the NIDA website.
- For more information on strategies to reduce drug diversion in the Medicaid program, visit http://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/MedicaidIntegrityProgram/downloads/drugdiversion.pdf on the Centers for Medicare & Medicaid Services (CMS) website.

## References


1 Centers for Medicare & Medicaid Services. Center for Program Integrity. (2012, January). Drug Diversion in the Medicaid Program: State Strategies for Reducing Prescription Drug Diversion in Medicaid. Retrieved February 10, 2015, from http://www4a.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/MedicaidIntegrityProgram/downloads/drugdiversion.pdf

2 Council of State Governments. (2004, April). Drug Abuse in America–Prescription Drug Diversion. Trends Alert. Retrieved February 10, 2015, from http://www.csg.org/knowledgecenter/docs/ta0404drugdiversion.pdf

3 National Institutes of Health. Author Manuscript. (2007, March). Mechanisms of Prescription Drug Diversion Among Drug-Involved Club- and Street-Based Populations. Retrieved February 10, 2015, from http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2879025/pdf/nihms177080.pdf

4 U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Office of Applied Studies. (2010, July 15). Substance Abuse Treatment Admissions Involving Abuse of Pain Relievers: 1998 and 2008. Treatment Episode Data Set (TEDS) Report. Retrieved February 10, 2015, from http://oas.samhsa.gov/2k10/230/230PainRelvr2k10Web.pdf

5 Centers for Disease Control and Prevention. (2014, October). NCHS Fact Sheet. NCHS Data on Drug Poisoning Deaths. Retrieved February 12, 2015, from http://www.cdc.gov/nchs/data/factsheets/factsheet_drug_poisoning.html

6 U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration. Center for Behavioral Health Statistics and Quality. Drug Abuse Warning Network, 2011: National Estimates of Drug-Related Emergency Department Visits. Retrieved February 20, 2015, from http://www.samhsa.gov/data/sites/default/files/DAWN2k11ED/DAWN2k11ED/DAWN2k11ED.pdf

7 U.S. Department of Transportation. National Highway Traffic Safety Administration. (2010, November). Drug Involvement of Fatally Injured Drivers. Retrieved February 10, 2015, from http://www-nrd.nhtsa.dot.gov/pubs/811415.pdf

8 U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Center for Behavioral Health Statistics and Quality. (2013, September). Results From the 2012 National Survey on Drug Use and Health: Summary of National Findings. Initiation of Substance Use. Retrieved February 10, 2015, from http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/NationalFindings/NSDUHresults2012.pdf

9 U.S. Government Accountability Office. (2009, September). Fraud and Abuse Related to Controlled Substances Identified in Selected States. Retrieved February 10, 2015, from http://www.gao.gov/new.items/d09957.pdf

10 Council of State Governments. (2004, April). Drug Abuse in America–Prescription Drug Diversion. Trends Alert. Retrieved February 10, 2015, from http://www.csg.org/knowledgecenter/docs/ta0404drugdiversion.pdf

11 The FBI Federal Bureau of Investigation. New York Field Office. (2010, August 12). Manhattan U.S. Attorney Charges Nine Members of Oxycodone Drug Distribution Ring. Retrieved February 10, 2015, from http://www.fbi.gov/newyork/press-releases/2010/nyfo081210.htm

12 U.S. Attorney's Office. Southern District of New York. (2012, December 18) Doctor Who Supplied Oxycodone Ring Sentenced in Manhattan Federal Court to 36 Months in Prison. Retrieved February 10, 2015, from http://www.justice.gov/usao/nys/pressreleases/December12/WilliamsonDianaSentencing.php

13 U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Center for Behavioral Health Statistics and Quality. Drug Abuse Warning Network, 2011: National Estimates of Drug-Related Emergency Department Visits. Retrieved February 10, 2015, from http://www.samhsa.gov/data/2k13/DAWN2k11ED/DAWN2k11ED.htm

14 U.S. Drug Enforcement Administration. Drug Fact Sheets. Retrieved February 10, 2015, from http://www.justice.gov/dea/druginfo/factsheets.shtml

15 National Institute on Drug Abuse. (2014, July). Prescription Drugs & Cold Medicines. Commonly Abused Drugs. Retrieved February 10, 2015, from http://www.drugabuse.gov/drugs-abuse/prescription-drugs

16 U.S. Department of Health and Human Services. (2012, January 20). CPI-CMCS Informational Bulletin. Affordable Care Act Program Integrity Provisions–Guidance to States—Section 6501–Termination of Provider Participation Under Medicaid if Terminated Under Medicare or Other State Plan. Retrieved February 10, 2015, from http://www.medicaid.gov/Federal-Policy-Guidance/downloads/CIB-01-20-12.pdf

## How to Report Fraud

Contact your State Medicaid Fraud Control Unit (MFCU), State Medicaid agency (SMA), or HHS-OIG.

- MFCU and SMA contact information: http://www.cms.gov/medicare-medicaid-coordination/fraud-prevention/fraudabuseforconsumers/report_fraud_and_suspected_fraud.html
- HHS-OIG
  ATTN: Hotline
  P.O. Box 23489
  Washington, D.C. 20026
  Phone: 1-800-HHS-TIPS (1-800-447-8477)
  TTY: 1-800-377-4950
  Fax: 1-800-223-8164
  Email: HHSTips@oig.hhs.gov
  Website: https://forms.oig.hhs.gov/hotlineoperations/

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