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MEMORANDUM

TO: RHCF, ACF and Assisted Living Members

FROM: Sandy Biggi, Director of Nursing Facility Policy
Diane Darbyshire, Senior Policy Analyst
Elliott Frost, Senior Policy Analyst

DATE: January 15, 2010

SUBJECT: **Disposal of Pharmaceuticals**

ROUTE TO: Administrator, Directors of Nursing, Pharmacy and Finance

ABSTRACT: NYAHS explores implications of recent AG settlement on drug disposal.

NYAHS has received a number of member calls related to a recently announced settlement of actions brought against nursing homes and hospitals by the Office of the Attorney General. At issue was the disposal by the providers of pharmaceutical waste into the water system. While the case involved five facilities within the New York City watershed, the procedures used to dispose of the pharmaceuticals may be similar to the procedures used in the rest of the state and as such suggest significant implications for all providers. The Attorney General's press release on this case is posted at: http://www.ag.ny.gov/media_center/2010/jan/jan12a_10.html.

The investigation by the Attorney General found that the providers were in violation of the *Resource Conservation and Recovery Act* (RCRA) which requires the identification, tracking and disposal of pharmaceutical and other wastes defined as hazardous under RCRA. The investigation looked at the disposal of hazardous drugs, controlled substances and products such as batteries and light bulbs that have the potential for contamination of the water supply.

Hazardous drugs (i.e. Warfarin) that are on the RCFA hazardous list may be disposed of by commingling the product with hazardous wastes, and removed by the vendor who services the provider if they are in agreement with this procedure. The RCFA list is available at <http://www.h2e-online.org/hazmat/pharma.html#listed> and members should work with their pharmacy on identifying any issues related to the pharmaceuticals being utilized.

According to NYS regulations, controlled substances must be destroyed onsite. There is no state or federal requirement that prohibits flushing of these medications; however, based on the recent actions of the Attorney General, there are reasons to examine current practice. NYAHS

contacted the Bureau of Controlled Substances at DOH and they acknowledged that 98 percent of providers currently flush controlled substances. They are exploring guidance based on the recent probe by the Attorney General. Lastly, hazardous items from the RCFA list such as light bulbs or batteries must be handled as hazardous waste and not discarded as part of routine trash.

Currently NYAHSa is in discussion with its general counsel about potential legal implications of the decision on members statewide. In addition we have had discussions with both the Bureau of Controlled Substances and staff with the NYS Department of Environmental Conservation. The issue is on the agenda for the monthly DOH-Association meeting to be held on January 28, 2010. Additionally, NYAHSa has had discussions with AAHSA staff and this issue is being discussed on a national level. In early 2009, the Drug Enforcement Administration (DEA) had solicited input through AAHSA members on the disposal of unused drugs in long term care facilities. The results of the DEA study are not yet available. We are also investigating other disposal options that may be available.

NYAHSa will provide members with more information on this subject as we receive it. In the meantime, members with questions or suggestions based on their own experiences with this issue may contact Elliott Frost at 518-449-2707, ext. 140 or via e-mail at efrost@nyahsa.org, Sandy Biggi, ext. 156, email sbiggi@nyahsa.org, or Diane Darbyshire, ext. 162, email ddarbyshire@nyahsa.org.