



July 20, 2015

Division of Dockets Management (HFA-305)
Food and Drug Administration
Department of Health and Human Services
5630 Fishers Lane
Room 1061
Rockville, MD 20852

Re: FDA-2014-N-1459 – FDA Draft Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products Between the State of [Insert State] And the U.S. Food and Drug Administration

Dear Sir/Madam:

ASHP is pleased to submit comments to the Food and Drug Administration (FDA) on the *FDA's Draft Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products* (Draft MOU). The Draft MOU was announced in the Federal Register on February 19, 2015.¹ ASHP represents pharmacists who serve as patient care providers in acute and ambulatory settings. The organization's more than 40,000 members include pharmacists, student pharmacists and pharmacy technicians. For over 70 years, ASHP has been on the forefront of efforts to improve medication use and enhance patient safety. ASHP was actively engaged in assisting the FDA and federal lawmakers from the onset of the meningitis outbreak in late 2012. In the aftermath of the incident, ASHP has worked with policymakers, practitioners, and nationally recognized experts in compounding and manufacturing to develop new approaches to protect patients from preventable harm, and to give practitioners and organizations confidence that compounding outsourcers are appropriately regulated and inspected, and that the products they produce are safe.

ASHP commends the FDA for its recognition of pharmacy compounding as an essential service for patients and for its actions to make clear the difference between traditional compounding and manufacturing. We support the Agency's efforts to protect public health by preventing quasi-manufacturers operating as compounding pharmacies to ship large quantities of compounded human drugs from one or more.

The comments below address factors that we perceive to be unresolved by the current MOU, that may hinder its implementation, or that result in unintended consequences.

¹ Federal Register, Volume 80, No. 33. Pages 8874 – 8881

- 1) Page 8877 of the Federal Register notice: "...Patients can now obtain compounded human drug products from outsourcing facilities which are not subject to volume restrictions on interstate distribution." We believe this is an inaccurate statement. Any prescription for compounded drugs must be obtained from a pharmacy or a compounding physician. An outsourcing facility that chooses to operate as a pharmacy must be licensed by the State in which it operates and must dispense as a 503A drug establishment. While outsourcing facilities are not restricted by limits on interstate distribution, it is unclear whether the same would be true when they are operating as a 503A pharmacy and if they would be subject to the 30% limit on interstate distribution when dispensing as a pharmacy.
- 2) Page 4 of the Draft MOU: ASHP agrees that compounded human drugs that are directly dispensed to patient or agent to carry across state lines should not be subject to the 30% limit. However, we request clarification of what is meant by "agent" in this context, as the meaning may be different from an "individual empowered to make healthcare decisions." ASHP cautions the FDA that limiting the types of individuals who may serve as the patient's agent will disproportionately affect those with illnesses, conditions, or family situations that prevent them from picking their drugs up in person. Personal pickup is insufficient evidence of a provider/pharmacist/patient triad as most patients do not see or speak to a pharmacist during this interaction.
- 3) Page 4 of the Draft MOU: ASHP requests that the FDA further clarify "unit" to mean a drug product finished in its deliverable form for the purposes of the 30% interstate distribution limit. A "unit" may potentially be interpreted as one final dosage form, i.e., one oral troche, or one box of five troche intended as a single course of treatment.
- 4) Appendix A. Definition of Terms Used in the MOU: ASHP requests that the FDA provide a clear definition of a "compounded human drug product." This definition should specifically state what a "compounded human drug product" is not (i.e., not a biologic and not a drug made by "mixing, reconstituting, or other such acts that are performed in accordance with directions contained in approved labeling provided by the product's manufacturer and other manufacturer directions consistent with that labeling"). These additional distinctions will improve understanding in the compounding community regarding what needs to be counted towards the 30% limit.
- 5) Appendix A. Definition of Terms Used in the MOU: ASHP requests that the FDA reconsider the use and definition of "distribute" for the purposes of the MOU: After careful consideration of the definition of "distribute" in the Draft MOU, ASHP understands why the FDA has included dispensed compounded human drugs for the purposes of determining whether a pharmacy is transferring inordinate amounts to other states. As these products require an individual patient prescription to be compounded, exempting filled prescriptions from the 30% limit would essentially exempt the pharmacy from any of the MOU requirements.

However, for clarity ASHP believes that the FDA should revise the language in the Draft MOU to be direct and more specific as to its intent. Using "distribute" to mean both "dispense and distribute" may serve the purposes of the MOU; however, it is insufficiently precise and moreover, contradicts

the definition commonly understood by the pharmacy profession (see State pharmacy regulations².)

ASHP strongly recommends for the purposes of the MOU that the Agency employ the language in 503A(b)(3)(B)(ii) of the FD&C Act, and use “dispense and distribute” instead of simply “distribute.”

We also believe this clarification covers any transaction under which a compounded human drug may be legally transferred to a third party by a pharmacy and obviates the need to define “distribution” in the glossary.

ASHP strongly urges the FDA to consider the following issues that may result from implementing the current version of the Draft MOU:

- **Patients may experience difficulty obtaining their prescriptions.** Patients tend to choose pharmacies for their compounded drugs based on services these entities are able to provide, rather than a convenient location. We are unable to gauge whether the 30% rule will mean that some patients using out of state pharmacies will be unable to obtain their prescriptions as the entity approaches the limit. We advise the Agency that patient complaints may occur, especially in large multistate metropolitan areas.
- **Patients may have to switch pharmacies due to transportation hardship.** Patients who are unable to receive their prescriptions in person may be disproportionately affected by the requirement to travel to an out of state pharmacy.
- **States signing the MOU may experience procedural and resource issues.** States vary broadly in their governing structure for health professions and the resources they have to assure compliance. Control of interstate shipment will require collaboration among state boards to ensure effectiveness and these regulatory bodies currently function independently. Medical

² From the National Association of Boards of Pharmacy (NABP) Model Act:

- (a2) *“Dispense” or “Dispensing” means the interpretation, evaluation, and implementation of a Prescription Drug Order, including the preparation and Delivery of a Drug or Device to a patient or patient’s agent in a suitable container appropriately labeled for subsequent Administration to, or use by, a patient.*
- (b2) *“Distribute” or “Distribution” means to sell, offer to sell, deliver, offer to deliver, broker, give away, or transfer a Drug, whether by passage of title, physical movement, or both. The term does not include:*
- 1) *To Dispense or Administer;*
 - 2) *Delivering or offering to deliver a Drug by a common carrier in the usual course of business as a common carrier; or*
 - 3) *Providing a Drug sample to a patient by a Practitioner licensed to prescribe such Drug; a health care professional acting at the direction and under the supervision of a Practitioner; or the Pharmacy of a hospital or of another health care entity that is acting at the direction of such a Practitioner and that received such sample in accordance with the Act and regulations to administer or dispense.*

Licensing Boards likely have not procedures to determine how physician-compounded human drugs are dispensed or distributed. The Agency does not address these challenges such as these or how it will help the States meet them. We recommend that the Agency help ensure the success of its effort to make use of compounded drugs safer by maintaining an open two-way dialog with State Boards.

- **Home infusion pharmacy services.** We are concerned that the MOU in its current form will negatively impact patients through eliminating the current operational model of national and regional home infusion pharmacies. These establishments are essential components of home health services, and provide compounded sterile medications (typically a week's supply) pursuant to individual patient prescriptions for use in the home or other alternative setting. The patient populations served range from infants to the frail elderly and include disabled, debilitated, or chronically ill patients. Medications most commonly provided include antibiotics, chemotherapy, pain medications, hydration, enteral and parenteral nutrition, and specialty drugs requiring specialized pharmacy services. Thousands of patients would be affected at increased cost to the healthcare system.

While Congress did not exempt a particular product or drug establishment from 503A at the time of the statute's enactment in 1999, they could not have predicted that in 25 years, better care for some patients would be delivered in the patients' homes, not hospitals.

We believe that the MOU is a positive step in the process of greater Federal/State coordination on compounding issues. However, it will be vital for the FDA to continue to work closely with the National Association of Boards of Pharmacy and State Boards of Pharmacy to coordinate efforts to prevent future NECC-type events. ASHP appreciates the opportunity to comment as the FDA develops the Final MOU. Please contact me if you have any questions or wish to discuss our comments further. I can be reached by telephone at 301-664-8806, or by e-mail at ctopoleski@ashp.org.

Sincerely,



Christopher J. Topoleski

Director, Federal Regulatory Affairs.