



# AND THE LAW

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## PARTIAL FILLS

Partial filling of prescriptions has been going on for a long time in pharmacies. So long in fact that most pharmacists don't think about the legalities of doing so. When you search for laws or regulations about partial filling, you get few results addressing partial filling for non-controlled substances. One of the few that is found is in West Virginia.<sup>1</sup> This code section allows the partial filling of any prescription if the pharmacy is unable to supply the entire amount or if the patient requests a lesser amount. Many states just don't address partial filling for non-controlled substances in their laws or regulations.

Almost all states have a regulation regarding the partial filling of controlled substances, particularly Schedule II. Many of them are worded similarly to the DEA regulation on this subject.<sup>2</sup> What is different about the DEA regulation is that it only allows partial filling in situations where the pharmacy is unable to supply the entire amount of the prescription. It doesn't permit the patient to request a partial fill of a Schedule II substance. One of the unforeseen results of these regulations has been its potential contribution to the opioid crisis. In response to the crisis, Congress passed the Comprehensive Addiction and Recovery Act of 2016 (CARA).<sup>3</sup> One of the many provisions of the law allows the patient or the prescriber to request a partial fill of

a prescription for Schedule II controlled substances. Although the DEA hasn't rewritten its regulations, the interpretation of the law has been that CARA supersedes the DEA regulations to allow the patient or the prescriber to request the partial fill.

For non-controlled substances, what is the legal status of partial filling in those states whose laws and regulations are silent on the issue? The answer depends on your view of how the law works. Some would say that there is nothing prohibiting it, so I can proceed to partially fill the prescription. The other view would say that there is nothing permitting it, so I can't do it. Given the history of partial filling, I would agree with the former view. It is such an ingrained part of pharmacy practice, with little apparent risk to the public, that regulators haven't felt the need to address it.

However, there are risks when partial filling a prescription. There have been claims reported when the remaining portion of the prescription has been filled incorrectly. Partial filling is a deviation from the normal workflow, so there is an increased chance of error in that situation. Errors occur most often with look-alike, sound-alike pairs. There can also be interruptions in therapy if the remainder is overlooked or misplaced. There is also a risk that the patient will not come back to finish the course of their treatment. It is important to make sure that there is accurate documentation of what was dispensed and when.

On top of the treatment risks, there are also

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1 West Virginia Code Section 30-5-27.

2 Title 21 CFR Sections 1306.13. Section 1306.23 for Schedules III, IV, and V does not contain that limitation.

3 Public Law 114-198

contractual issues. Partial filling may be addressed in your contracts with third party payers. These provisions may address when partial filling may occur, how it is to be documented, and how to charge for the prescription. Failure to follow the contractual requirements could result in an audit and recoupment of third party payments. It is especially important to follow the contractual requirements in cases of partial filling when the patient fails to pick up the remainder of the prescription. Failure to adjust billings in those cases could end up as cases of unjust enrichment or fraud.

At first glance, the issue of partially filling a prescription seems pretty benign. However, it does present some pitfalls for the unwary. The legal and/or contractual requirements may be contradictory to what is seen as good patient care. For example, the patient presents with a new prescription for an expensive medication. It may make sense to dispense a few days' supply to make sure that the patient can tolerate the new treatment. But this can be problematic if regulations or contractual requirements do not allow partial fills. Unfortunately the world is not always rational or logical. Because of these complexities, partial filling should be addressed in your pharmacy's policy and procedure manual.

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