

States moving quickly to switch execution drug

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COLUMBUS, Ohio (AP) — Nearly two-thirds of the 16 states with active death chambers are switching to an alternative sedative for execution — even as the drug's manufacturer argues against its use in capital punishment and some European countries push export bans for such drugs.

Ten states have now switched to pentobarbital or are considering a switch as part of their three-drug methods, according to a survey of all death penalty states by The Associated Press. Among those joining the states that previously switched are Alabama, Louisiana and Florida.

South Carolina also is considering using the drug as it prepares for an execution next month.

At issue is a shortage of sodium thiopental, a sedative that states used for more than three decades until its only U.S. manufacturer stopped making it in 2009 and then dropped plans to resume production earlier this year.

The shortage forced several states to scramble to find new supplies and executions were temporarily delayed in Arizona, California, Georgia and Oklahoma. States swapped supplies of sodium thiopental or looked overseas, to England, India and even Pakistan.

Both sodium thiopental and pentobarbital are fast-acting barbiturates that in massive intravenous doses will quickly stop a person's breathing and cause death in 10 to 15 minutes.

As states scrambled for fresh supplies, several turned to England and obtained doses of sodium thiopental not approved for medical use in this country by the FDA. But that source dried up after the British government banned the drug's export for use in executions and the U.S. Drug Enforcement Administration began seizing supplies of the drug from Georgia and other states over questions of whether the states broke the law to get it.

Death row inmates in Arizona, California and Tennessee sued over the imported drugs, alleging the FDA knowingly allowed the import of a drug that hadn't been approved by the agency.

Documents obtained by the American Civil Liberties Union show the FDA quietly assisted some states in importing sodium thiopental from overseas. The agency has said reviewing death penalty drugs for import falls outside its mission.

South Carolina also obtained its supply of sodium thiopental from England, then informed the DEA after the agency began seizing other states' supply. South Carolina is exploring pentobarbital, possibly used alone, and other options before the scheduled May 6 execution of Jeffrey Motts, 36, condemned to die for killing his cellmate in 2005 while serving two life sentences for a previous double homicide.

“We’re looking at other alternatives, just as other states have done,” said South Carolina prisons spokesman John Barkley.

The 10 states that have either switched to pentobarbital or are considering a switch are among 16 states that held executions in the past three years or have executions scheduled this year.

Five of those states say they’re exploring their options or researching the issue, phrases other states used before announcing the switch. A sixth, Washington, has no plans to change.

Some states without recent executions or any scheduled in the near future are also switching or considering a switch to pentobarbital in case the need arises, including Delaware, Oregon and Idaho.

“Corrections departments across the country are struggling to find a reliable supply of that drug and we want to give ourselves some flexibility and some options as we go forward,” said Idaho prisons spokesman Jeff Ray.

Only two states, Ohio and Oklahoma, have used pentobarbital in executions. Oklahoma uses it along with drugs that paralyze inmates, then stops their hearts. Ohio uses one single dose of pentobarbital.

Pentobarbital, available for use since 1930, is used by doctors as a sedative in some surgeries, as a hypnotic for short-term treatment of insomnia and to control certain types of seizures, such as those associated with bouts of cholera, meningitis and an emergency state of epilepsy.

The drug has also been used in legally assisted suicides in Oregon and Washington. Nembutal, a chemically related version of pentobarbital marketed to veterinarians, is used in combination with other drugs to put animals to sleep.

Anti-death penalty groups want pentobarbital’s Danish manufacturer, Lundbeck Inc., to write clauses into contracts with pharmaceutical distributors to ban its use in executions.

Lundbeck, which strongly opposes the use of its drug for capital punishment, says such clauses would be impractical because of the way drugs are distributed.

“We don’t control the full supply chain and how it gets into the hands of the end user,” said Lundbeck’s U.S. spokeswoman Sally Benjamin Young

“The only effective way to prevent its misuse is to withdraw the product from market, which in our view is unethical, because it provides important medical uses for treating patients.”

Lene Espersen, the foreign minister in Denmark, where the drug is manufactured, said last week she’ll urge states using the drug to stop. Britain has also banned the export of pentobarbital and two other execution drugs.

Britain's export ban on death penalty drugs means the handful of English companies that make such drugs have to apply for a license to export the product. The license can be denied if the manufacturer and any intermediaries can't identify all buyers and the intended use for the drug.

These controls are apparently similar to those put in place for certain arms companies to ensure weapons don't fall into the wrong hands.

Penalties for companies exporting the drugs without a license would be decided on a case-by-case basis, but would include fines and legal prosecution, said Lucy Sutton, a spokeswoman in Britain's department for business, innovation and skills.

"They would be taken to court and there would be legal repercussions," she said. She also said it is illegal to import drugs used for execution purposes into the U.S. without having a license from the FDA.

For now, the impact of Britain's pentobarbital ban is likely nominal, since states can easily obtain legal supplies of the FDA-approved U.S. version.

Moreover, any attempt to prohibit pentobarbital's use in executions would be complicated by the way drugs are distributed, as Lundbeck argues.

Once a drug maker sells its initial supplies to wholesalers, the drugs are then re-shipped to a variety of retailers around the country, who then can re-sell them to licensed medical professionals.

"The manufacturer has very little control, either in where it's going through the supply chain or how it goes through the supply chain," said Bob Billings, executive director of the Generic Pharmaceutical Association. "It's in the hands of another at that point."

For example, before Ohio switched to pentobarbital, the state purchased its supply of sodium thiopental from the Southern Ohio Medical Center, a hospital in Lucasville just a few miles from the prison where Ohio puts inmates to death.

Texas, with the country's most active death penalty state, obtained all three of its execution drugs from Besse Medical of suburban Cincinnati, a large pharmaceutical distributor. The company says it has no way to determine what its customers do with its products.

It's also not illegal to use drugs for purposes other than their approved use, known as "off-label" use. As long as a company doesn't promote off-label use, it's not responsible for how the drug is used, said Dan Mendelson, a Washington, D.C.-based health care analyst who authored "Follow the Pill," a 2005 study of pharmaceutical distribution for the Kaiser Family Foundation.

However, pressure from European countries can have an effect.

In January, the only U.S. manufacturer of sodium thiopental said it was discontinuing the drug's production because Italian authorities wanted a guarantee that it wouldn't be used to put inmates to death.

Hospira Inc., of Lake Forest, Ill., said it had decided to switch manufacture of the anesthetic from its North Carolina plant to a Hospira plant in Liscate, outside of Milan, in Italy. But Italian authorities insisted the company control the product's distribution all the way to the end user to guarantee it wouldn't be used in executions.

Hospira had also urged states not to use its drugs in executions. After discussions with Italian authorities, with Hospira wholesalers and within the corporation, the manufacturer decided it couldn't make that promise.

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