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Additional Opioid Policy Changes Announced: What You Need to Know

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Despite the July 4 holiday, the past week featured significant regulatory and legislative action addressing the use of opioids and pain management. The changes are in keeping with the Government-wide push to better understand and reduce opioid drug abuse. We discuss here the week's two most notable developments.

Updating the HCAHPS Hospital Survey and Value-Based Purchasing Program

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The ***Hospital Consumer Assessment of Healthcare Providers and Systems ("HCAHPS")*** survey is a 32-item survey used to measure patients' perceptions of their hospital experience. Eight of the 11 HCAHPS measures, called "dimensions," are included in the Medicare Hospital Value-Based

Purchasing ("VBP") Program, an initiative created pursuant to Section 3001(a) of the Affordable Care Act and administered by the Centers for Medicare and Medicaid Services ("CMS"). The VBP Program scores and rewards "acute-care hospitals with incentive payments for the quality of care they provide to people with Medicare."

Since the program's inception, CMS had evaluated hospital performance and patient experience of care using an approved set of HCAHPS measures, including pain management. On July 6, however, CMS published a proposed rule that would "remove the HCAHPS Pain Management dimension (which consists of three questions) in the Patient- and Caregiver-Centered Experience of Care/Care Coordination domain due to confusion about the intent of these questions and the public health concern about the ongoing prescription opioid overdose epidemic."

CMS acknowledged in the preamble to the proposed rule that "pain control is an appropriate part of routine patient care that hospitals should manage and is an important concern for patients, their families, and their caregivers," and that "appropriate pain management includes communication with patients about pain-related issues, setting expectations about pain, shared decision-making, and proper prescription practices." And, indeed, "CMS is not aware of any scientific studies that support an association between scores on the pain management dimension questions and opioid prescribing practices" but intends to (1) "remove the pain management dimension of the HCAHPS survey . . . in an abundance of caution"; and (2) and replace it with the pain management communication questions and other survey measures used in the Outpatient and Ambulatory Surgery Consumer Assessment of Healthcare Providers and Systems, a Federal survey collecting information about patients' perceptions of their experiences in hospital outpatient departments and ambulatory surgery centers.

It remains to be seen whether and how the planned change in survey instruments ultimately generate an appreciable (and clinically appropriate) decrease in rates of opioid prescribing and incidents of misuse. Comments on the proposed rule are due by September 6, 2016.

Conference Report Submitted on Federal Opioid Legislation

The Comprehensive Addiction and Recovery Act of 2016, S. 524 ("CARA"), the first Federal anti-opioid abuse legislation, emerged from the U.S. Senate on March 10, 2016. On July 6, the House Energy and Commerce Committee convened a meeting of House and Senate "opioid conferees" to debate on the conference report on CARA. (A "conference report" is an agreement on legislation negotiated between the House and Senate via conference committees.) Later on July 6, a conference report on CARA was finalized and filed, authorizing $181 million in annual discretionary spending for new programs contained in the legislation. Among the changes made in the conference report are:

- adoption of the Opioid Program Evaluation Act, H.R. 5052, which requires the Attorney General to evaluate the effectiveness of CARA's Comprehensive Opioid Abuse Grant program in addressing the incidence of opioid abuse and illegal opioid distribution;

- increasing the membership of the Pain Management Best Practices Inter-Agency

Task Force and expanding its duties beyond best practices for chronic and acute pain management to include improved pain management strategies based on differences within and between classes of opioids, the availability of opioids in abuse-deterrent formulations, and the management of opioid use among high-risk populations;

- providing greater flexibility in partially filling Schedule II controlled substances; and

- amending the Controlled Substances Act to permit nurse practitioners and physician assistants to receive a waiver from the Substance Abuse and Mental Health Services Administration to dispense certain drugs for maintenance or detoxification treatment.

Although CARA passed the Senate and the House with wide, bipartisan margins, its future remains uncertain. The Executive Office of the President issued a Statement of Administration Policy in March, "concerned that the bill does not include the funding necessary to implement the [] [steps needed to respond to the opioid epidemic] and until that funding is provided by the Congress, these steps would do little to address the epidemic."