THE
NATIONAL LAW REVIEW

The Nuts and Bolts of West Virginia's Opioid Reduction Act

Tuesday, June 12, 2018

In 2016, West Virginia had the highest death rate in the country from drug overdoses—primarily caused by opioids—at 52.0 for every 100,000 people.[1] The state was on track to exceed that number in 2017.[2] Seeking to enact policies that not only curb but reverse this upward trend, the West Virginia Legislature introduced a number of bills during the 2018 Regular Legislative Session that sought to address this disturbing epidemic. One of these, S.B. 271, passed the Legislature on March 9 and created the Opioid Reduction Act. This bipartisan legislation became effective on June 7 with Department of Health and Human Resources Cabinet Secretary Bill J. Crouch stating that it is his hope that "[w]ith this information, providers can make more appropriate recommendations concerning pain management."[3]

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Biotech, Food, Drug
Health Law & Managed Care
West Virginia

Codified at W. Va. Code § 16-54-1 to 9, the law limits the time period for which a provider may issue an opioid prescription to a finite number of days, allows for nonopioid advance directives and requires narcotics contracts. The law does not apply to any practitioner-patient relationship established before January 1, 2018, where there is an established, current and documented opioid treatment plan.

Limiting Opioid Prescription Supply

Under the new provisions, a health care practitioner—physicians, podiatrists, physician's assistants and advance practice registered nurses—may not prescribe more than a four day supply of opioids to any patient being treated in an emergency room or urgent care facility. All practitioners issuing a prescription to a minor are limited to prescribing no more than a three day supply. Additionally, the minor's parent or guardian must be counseled on the risks associated with opioid use, as well as why the prescription is necessary. In other settings, including for post-surgery patients, an initial opioid prescription may not be for more than a seven day supply, and must be, using the provider's best medical judgment, for the lowest effective dose. There are exceptions to these supply limits: for those who have cancer, receive hospice or palliative care or live in a long-term care facility, and for those who are being treated with an opioid for a substance use disorder.

As for other types of providers, dentists and optometrists are limited to prescribing no more than a three day supply of opioids, and veterinarians are limited to prescribing no more than an initial seven day supply.

Before prescribing an opioid, a practitioner must take and document a thorough medical history of the patient, including the patient's experience with nonopioid medications, nonpharmacological pain management options and a substance abuse history. The provider must also conduct and document a physical examination, develop a treatment plan that focuses on determining the cause of the patient's pain and query the Controlled Substances Monitoring Program Database. Patients must also be advised of their ability to fill an opioid prescription in a lesser quantity than issued and the risks associated with the prescribed opioid.

At the upper limit, no provider may give more than a 30 day supply of any Schedule II controlled substance, with a limit of two additional prescriptions in this amount for a total of a 90 day supply, and requires the provider to access the Controlled Substances Monitoring Program Database. After the issuance of a third opioid prescription, regardless of the supply amount, a practitioner must consider referring the patient to a pain specialist or clinic. If

the patient declines, the practitioner must take extra steps if she continues to treat the patient with an opioid including documenting that the patient knowingly declined specialized treatment, reviewing at least every three months the patient's course of treatment, frequently assessing whether the patient is experiencing any physiological or physiological dependence on the opioid, and periodically making reasonable efforts to try other treatment modalities as an alternative to treatment with opioids.

Subsequent Prescriptions

A subsequent prescription may be not issued until at least six days have passed since an initial, seven day prescription was issued. However, this subsequent prescription may only be given if it is not considered an initial prescription and the practitioner:

- determines that prescription is:
    - necessary;
    - appropriate for the patient's treatment needs; and
    - does not present an undue risk of abuse, addiction, or diversion;
- documents all determinations;
- discusses with the patient, or her parent or guardian:
    - the risks associated with the specific drug being prescribed which must include:
        - the risks of addiction;
        - the risks of overdose;
        - the dangers of taking opioid drugs with benzodiazepines and other central nervous system depressants and that it can result in fatal respiratory depression;
        - that opioids are highly addictive, even when taken as prescribed, and that it is possible to develop a physical or psychological dependence; and
        - the risks of taking a higher dose than prescribed;
    - the reasons why the prescription is necessary; and
    - alternative treatments.

The new law also seeks to encourage practitioners and patients to try nonpharmacological interventions for pain treatment, as it states practitioners must refer or prescribe alternative treatments, subject to the practitioner's clinical judgment and treatment availability, before starting a patient on an opioid. These treatments include physical therapy, acupuncture, massage therapy, osteopathic manipulation, chronic pain management programs and chiropractic care. Of these, physical therapy, osteopathic manipulation, chronic pain management programs and chiropractic care must be covered for 20 visits by any insurer provider who has a product in the state.

Narcotics Contract

The law requires that a "Narcotics Contract" must be executed between the prescribing practitioner and patient for a prescription for any Schedule II controlled substance that is greater than a seven day supply. The contract must be made part of the patient's medical record, and must state that the patient will:

- only obtain scheduled medications from this particular prescribing practitioner;
- only fill those prescriptions at a single pharmacy; and
- notify the prescribing practitioner within 24 hours of any emergency where she is prescribed a scheduled medication.

If the patient breaches the contract, the practitioner may terminate the physician-patient relationship or may continue to treat the patient without prescribing Schedule II controlled drugs. Even with a Narcotics Contract in place, it is incumbent on the physician to frequently access the Controlled Substances Monitoring Program Database to ensure compliance.

Nonopioid Advance Directives

For patients who do not wish to be treated with opioids, the law directs the Office of Drug Control Policy to develop a "voluntary nonopioid advance directive form." The form will state the patient neither wishes to be treated with nor offered a prescription for an opioid, and the directive must be kept in the patient's medical record and transferred with the patient to other facilities. The patient is able to revoke the form at any time, both verbally and in writing. Importantly, a prescriber may be criminally and civilly liable for gross negligence or willful misconduct if the prescribing practitioner fails to follow the directive, except in medical emergencies where the practitioner does not have actual knowledge of the directive.

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[1] Drug Overdose Death Data, Centers for Disease Control and Prevention (2017),

https://www.cdc.gov/drugoverdose/data/statedeaths.html (last visited Jun 12, 2018).

[2] Eric Eyre, *WV overdose deaths set record in 2017, despite decrease after July*, Charleston Gazette-Mail , April 16, 2018, https://www.wvgazettemail.com/news/health/wv-overdose-deaths-set-record-in-despite-decrease-after-july/article_880a895f-6c19-565e-b8b2-3c73ee76a430.html (last visited June 12, 2018).

[3] DHHR Announces Implementation of New Opioid Prescribing Requirements, DHHR, https://dhhr.wv.gov/News/Pages/DHHR-Announces-Implementation-of-New-Opioid-Prescribing-Requirements.aspx (last visited Jun 12, 2018).

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