

## NEW LAW

# WHAT YOU NEED TO KNOW ABOUT NEW PRESCRIBING LAW FOR TREATMENT OF ACUTE AND CHRONIC PAIN

### WHICH PROVIDERS DOES THIS NEW LAW APPLY TO?

Physicians, dentists, optometrists, podiatrists, physician assistants, certified nurse midwives, or advanced practice nurses authorized to prescribe controlled substances.

### WHICH PATIENTS ARE EXEMPT FROM THIS NEW LAW?

The law does not apply to a prescription for a patient who is currently in active treatment for cancer, receiving hospice care from a licensed hospice or palliative care, or is a resident of a long term care facility, or to any medications that prescribed in the treatment of substance abuse or opioid dependence (medication assisted treatment).

### PRIOR TO ISSUING AN INITIAL PRESCRIPTION FOR ACUTE OR CHRONIC PAIN

In cases of acute or chronic pain a practitioner is required to:

- take and document the results of a thorough medical history, including the patient's experience with non-opioid medication and non-pharmacological pain management approaches and substance abuse history;
- develop a treatment plan, with particular attention focused on determining the cause of the patient's pain; and
- access relevant prescription monitoring information under the Prescription Monitoring Program;

### ISSUING AN INITIAL PRESCRIPTION FOR ACUTE PAIN

No authorized prescriber can issue an initial prescription for a Schedule II controlled dangerous substance or any opioid drug, which is a prescription drug, in a quantity exceeding a five-day supply for treatment of acute pain. There are no exceptions to this rule, not even for post-operative pain. The law does NOT address what constitutes a 5-day supply; however it does provide that any prescription for acute pain shall be the lowest effective dose of immediate-release opioid drug.

An initial prescription means that the patient has not had a prescription for that medication (or pharmaceutical equivalent) in the last year. Talking to the patient, looking at their medical record and checking the PMP is necessary to determine whether your prescription would be the patient's "initial" prescription.

### ISSUING SUBSEQUENT PRESCRIPTIONS FOR ACUTE PAIN

No less than four days after the initial 5-day prescription, an authorized prescriber may issue a prescription for the balance of the 30 days (up to 25 days), if necessary.

There are several options available to issue a subsequent prescription after the initial 5-day supply:

- (1) The patient comes into the office to pick up the physical script with or without an exam;
- (2) You can electronically prescribe the Scheduled II CDS or opioid prescription if your system is set up to e-prescribe CDS – REMEMBER e-prescribing is authorized by the feds and state; or
- (3) If the patient is unable to come to the office and you are not able to e-prescribe, current NJ regulations authorize you to call in an emergency oral prescription for pharmacies to dispense a Schedule II controlled substance in an amount not to exceed a 72 hour quantity necessary to treat the patient during an emergency. However, a written prescription with "Authorization for Emergency Dispensing" and the date of the oral order must be written on it and sent within seven days to the dispensing pharmacist in person or by mail/postmarked within the seven day period. See N.J.A.C. 13:45H-7.8

## **DISCUSSIONS WITH PATIENTS AND NOTATIONS IN PATIENT'S RECORD**

Whether prescribing opioids for acute or chronic pain, you are now required to include a note in the patient's medical record that there was a discussion with the patient or the patient's parent or guardian, as applicable, about the risks of developing a physical or psychological dependence on the controlled dangerous substance and alternative treatments that may be available. This discussion must occur prior to the *initial prescription and prior to issuing the third prescription*. **There are no exceptions to this rule, not even for post-operative patients.** Specifically, the informed consent section provides:

Prior to issuing the initial prescription of a Schedule II controlled dangerous substance or any other opioid drug which is a prescription drug for acute or chronic pain and again prior to issuing the third prescription of the course of treatment, a practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is under 18 years of age and is not an emancipated minor, the risks associated with the drugs being prescribed, including but not limited to:

- (1) the risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines and other central nervous system depressants;
- (2) the reasons why the prescription is necessary;
- (3) alternative treatments that may be available; and
- (4) risks associated with the use of the drugs being prescribed, specifically that opioids are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the controlled dangerous substance, and that the risks of taking more opioids than prescribed, or mixing sedatives, benzodiazepines or alcohol with opioids, can result in fatal respiratory depression.

The Division of Consumer Affairs shall develop and make available to practitioners guidelines for the discussion required. This remains to be seen and we intend to have input in this process.

## **FINANCIAL IMPACT OF 5-DAY SUPPLY LIMIT ON PATIENTS**

The law allows insurers to pro rate the patient cost for an opioid if only a 5 or 25 day amount is prescribed. But, the law also allows the insurers to collect payment for the full 30 day supply up front, so patients will not likely see any cost reductions if they only obtain a 5 day supply.

## **CHANGES IN INSURANCE COVERAGE FOR ADDICTION TREATMENT**

The law increases addiction treatment insurance coverage by requiring insurers to provide unlimited benefits for inpatient or outpatient treatment. The law guarantees coverage for 6 months without any prior authorization or other prospective utilization management requirements. The law also states that the benefits for outpatient visits shall not be subject to concurrent or retrospective review of medical necessity or any other utilization management review. Remember, this insurance mandate will **ONLY** impact state regulated health plans, not ERISA/self-funded health plans, Medicare or Medicaid.

## **MANDATORY CME**

And, finally, the state is now requiring that you take one credit of educational programs or topics concerning prescription opioid drugs, including responsible prescribing practices, alternatives to opioids for managing and treating pain, and the risks and signs of opioid abuse, addiction, and diversion. This one credit is part of your existing 100 hours for your biennial license renewal.

## **JUST FYI: PAIN AGREEMENTS NOW REQUIRED FOR TREATMENT OF CHRONIC PAIN**

While the use of pain contracts for chronic pain patients has been a BME guideline in current regulation, this new law codifies that regulation and makes the use of pain management agreements mandatory when treating chronic pain, defined as the continuous treatment for pain for three months or more.