Workers' Comp

Florida Governor Signs Opioid Legislation

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On March 19, 2018, Florida's Governor, Rick Scott, signed HB21. This legislation was proposed to combat the opioid epidemic in Florida. As reported in the press release about the bill signing, Governor Scott said, “This bill will help limit the chance of drug addiction, reduce the ability for dangerous drugs to spread in Florida's communities and give vulnerable Floridians needed support.”

The bill will promote important changes in a number of areas that should make great strides in helping Florida combat the opioid problem.

Highlights of the legislation include:

Education Requirements

- Requirement for prescribers registered with the DEA to complete a two hour, board approved continuing education course every two years on prescribing controlled substances.
    - The course must contain information on the current standards for prescribing controlled substances, especially opioids, using non-pharmacological treatment of pain, the use of opioid antagonists and the risks of addiction when prescribing opioids.
    - Completion of the course is required for a physician to maintain a license to practice.

Definition Changes

- Defines acute pain as a “normal, predicted, physiological and time-limited response” associated with an injury, surgery or acute illness.
    - The definition excludes pain related to cancer, terminal illnesses, palliative care or trauma with an Injury Severity Score of 9 or higher.

- Contains a substantial rewording of the section of statute dealing with the prescription drug monitoring program.
    - Revises and defines who has access
    - Allows for reciprocal agreements for access with drug monitoring programs in other states
    - Requires prescribers and dispensers to consult the database prior to prescribing or dispensing a controlled substance
    - Allows the department to establish a direct-support organization to raise funds, obtain grants, and otherwise support the prescription drug-monitoring program.

Standards

- Directs the licensing boards to establish standards of practice for treating acute pain that should include:
    - Guidelines for prescribing controlled substances
    - Patient evaluation
    - Creating and maintaining a treatment plan
    - Informed consent and agreement by the patient for treatment
    - Periodic review of the treatment plan
    - Medical record review
    - Compliance with controlled substances laws and regulations

Prescription Limits

- Imposes a 3-day limit on prescribing Schedule II opioids
    - Except a physician may prescribe up to 7 days if the prescriber, in their professional judgment, believes more than a 3-day supply is necessary for the patient's condition, adequately documents the need in the patient's record and indicates on the prescription “ACUTE PAIN EXCEPTION”.
- Prescriptions for Schedule II opioids for non-acute pain should be indicated by noting on the prescription “NONACUTE PAIN”.
- Requires a physician to concurrently prescribe an opioid antagonist when prescribing a Schedule II opioid for the treatment of pain related to an injury with an Injury Severity Score of nine or greater.
- Cleans up the language around the exemption of certain pain clinics from the registration requirements and details the form and information required to obtain an exemption.
- Requires a pharmacist to check the identification of any unknown persons prior to dispensing a controlled substance.
- In cases where a practitioner is allowed to dispense an opioid, it subjects the dispensing by the practitioner to the same limits of a 3-day supply, or in certain cases, 14 days.
    - Also allows the practitioner to dispense a concurrent opioid antagonist when required.
    - Practitioner should verify identification of unknown persons before prescribing and dispensing a controlled substance.

Scheduling Changes

- Adds dihydroetorphine, oripavine, remifentanil, tapentadol, thiafentanil, lisdexamfetamine, dronabinol and hydrocodone combination products to the list of Schedule II drugs.
- Adds buprenorphine, embutramide and perampanel to the list of Schedule III drugs.
- Adds alfaxalone, dexfenfluramine, dichloralphenazone, eluxadoline, eszopiclone, fospropofol, lorcaserin, modafinil, petrichloral, sibutramine, suvorexant, tramadol, zaleplon, zolpidem and zopiclone to the Schedule IV drug list.
- The Schedule V list now contains compounds with not more than 0.5 milligrams of difenoxin, and not less than 25 micrograms of atropine sulfate per dosage unit and compounds or preparations containing any

quantity of brivaracetam, ezogabine, lacosamide, or pregabalin.

Other

- Added the possession of tableting machines, encapsulating machines and controlled substance counterfeiting materials by unauthorized persons to the controlled substance act as a third or second-degree felony, based on the circumstances.
- Makes other technical and conforming changes to the controlled substances act.
- Details the appropriations to enhance and expand treatment options, provide opioid antagonists to first responders, provide medication-assisted treatment for criminal offenders, and to make enhancements to the prescription drug-monitoring program.

We commend the Florida Legislature and the Governor for their work on this comprehensive approach to the opioid crisis. This new law will be effective on July 1, 2018. There are some programming challenges to work through related to the exceptions to the 3-day limit for prescribing opioids and the short time to implementation, but we will be working with our customers to help manage those challenges. The first laws dealing with opioid prescribing limits generally adopted a 7-day period. The second wave of laws saw that period move to 5 days. Florida is one of the first states with a 3-day limit. We expect to see more states move to a 3-day limit, especially since Congress has recently introduced opioid legislation containing a 3-day limit for prescriptions related to acute pain.

A complete text of the enrolled version of HB21 can be found here.

The Governor's press release can be found here.

For questions regarding this legislation, or for other regulatory or legislative questions, please feel free to contact Brian Allen, vice president of government affairs at Brian.Allen@mitchell.com or at 801.661.2922.



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