Workers' Comp

West Virginia Governor Signs Opioid Reduction Act

April 5, 2018
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In 2016, West Virginia had the highest prescription opioid death rate in the country at 37.7 deaths per 100,000 citizens. The Governor and the legislature took notice and action. The result is the passage and subsequent signing of SB273.

This legislation includes the newly enacted “Opioid Reduction Act” and amends the sections dealing with the licensing of chronic pain clinics and the licensing of medication-assisted treatment programs. The bill also made conforming changes to Chapter 30: Professions and Occupations. Governor Justice signed the bill on March 27, 2018.

The new law is effective on June 7, 2018.

The Opioid Reduction Act includes important provisions that impact the entire landscape of health care including workers' compensation.

Highlights of the Act include:

- A non-opioid directive form that can be signed by an individual and contains an advanced directive to a health practitioner that the individual shall not be given or prescribed an opioid.
- Requires the prescriber to inform the patient of the quantity of the opioid being prescribed and the opportunity for the patient to fill at a lesser quantity.
    - It also requires the prescriber to inform the patient of the risks associated with the prescribed opioid.
- Limits opioids prescribed to an adult in an emergency room or urgent care facility for outpatient use to four days.
- Limits the prescribing of an opioid to a minor to three days.
    - Also requires the prescriber to inform the minor's parents or guardian of the risks association with the opioid prescribed.
- Dentists or optometrists may not issue an opioid prescription for greater than three days.

- A practitioner may not issue an initial opioid prescription for more than a seven-day supply. The prescription should also be for the lowest dose possible, in the judgment of the prescriber, for the condition being treated.
- Before issuing an initial opioid prescription the prescriber must do the following:
    - Document the patient's medical history including their experience with non-opioid medication and non-pharmacological pain management treatment
    - Conduct, as appropriate, and document the results of a physical exam
    - Develop a treatment plan with a focus on determining the cause of the pain
    - Access the patient's history in the Controlled Substances Monitoring Program Database
- Following the initial prescription, practitioners may not prescriber more than a 30-day supply of any Schedule II medication.
    - Except, if the practitioner accesses the West Virginia Controlled Substances Monitoring Program Database, two subsequent prescriptions each for a 30-day supply may be issued, for a total of a 90-day supply.
- Ongoing opioid treatment requires a physical exam every 90 days.
- Schedule II prescriptions for greater than seven days require the patient to execute a narcotics contract that includes these provisions:
    - The patient agrees to obtain schedule medications from this prescriber
    - The patient agrees to fill the Schedule II prescriptions at a single pharmacy
    - The patient agrees to notify the prescriber within 24 hours if the patient obtains a scheduled medication from another prescriber as the result of an emergency
    - If the patient fails to honor the contract the practitioner may terminate the patient-provider relationship or discontinue the prescribing of scheduled medications
- Subsequent prescriptions for an opioid may be issued no less than six days after the initial prescription if the prescriber determines the opioid to be medically necessary and the patient does not present undue risk for abuse, addiction or diversion and the patient medical record is appropriately documented.
- Before issuing a subsequent prescription, the prescriber shall discuss with the patient (or their parent or guardian if a minor) the risks associated with the drug being prescribed, including alternative treatments that may be available.
- For ongoing treatment of pain, at the time the prescriber issues the third 30-day prescription for an opioid, the prescriber should explain the benefits of seeking treatment through a pain clinic or specialist and the risks if the patient decides not to choose that option.
- If the patient declines to seek treatment from a pain clinic or specialist, the prescriber shall note in the patient's record the informed choice, review the course of treatment every three months and make continued efforts to reduce or eliminate the use of opioids.
- The prescribing limitations do not apply to:
    - Cancer patients
    - Patients in hospice care
    - Palliative care
    - Residents of a long-term care facility
    - Patients receiving treatment for substance abuse disorder
    - Patients receiving on-going opioid treatment as of January 1, 2018.
- A practitioner may prescribe an initial seven-day supply immediately post-surgery, and a subsequent prescription based on the provisions of this Act.
- When patients seek treatment for pain, practitioners should consider alternate treatments to opioids including physical therapy, acupuncture, massage therapy, osteopathic manipulation, chiropractic care or pain management.
- The legislation also mandates that insurers licensed in the state shall provide coverage for 20 visits of the alternate therapies. Patients do not require a referral from a practitioner to access the alternate therapies.

- The law does not prohibit a practitioner from prescribing an opioid and concurrently recommending an alternate treatment.

From a workers' compensation perspective, the opioid limitations are similar to what we have seen in other states. The provisions requiring the alternate care are new and will require careful monitoring by the payers. There was no language in the bill that exempted workers' compensation insurers from the alternate care requirements. Mitchell is committed to working closely with our customers to implement the provisions of this new law. The separate limitations for minors and the exceptions for post-surgery patients will require the exchange of some additional information to aid in the management of those specific situations.

A complete text of the bill can be found here.

For questions regarding this legislation or any other regulatory or legislative matter, please feel free to contact Brian Allen, vice president of government affairs at Brian.Allen@mitchell.com or at 801.903.5754.



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