

Health Law

Expert Analysis

New Law to Combat Opioid Addiction

For some time now, the national and local media have been focusing attention on the growing epidemic of abuse of the addictive pain killers classified as “opioids”. The Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services estimates that nearly five million people in the United States have an opioid dependence problem, and that 17,000 deaths a year are attributable to this addiction.¹ The Centers for Disease Control estimated that opioid overdose death rates sharply increased from 7.9 per 100,000 population in 2013 to 9.0 per 100,000 population in 2014.² Another report estimates that, of the 22,000 deaths due to drug overdoses, half were caused by overdoses of prescription drugs.³

Opioid abuse has been a growing problem in New York, which prompted Governor Andrew Cuomo to appoint a Heroin and Opioid Task Force co-chaired by Lieutenant Governor Kathy Hochul and Commissioner

FRANCIS J. SERBAROLI is a shareholder in Greenberg Traurig and the former vice chair of The New York State Public Health Council.

By
Francis J.
Serbaroli



Arlene Gonzalez-Sanchez of the New York State Office of Alcoholism and Substance Abuse Services (OASAS). This task force’s report included 25 recommendations to enhance

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addiction prevention, improve treatment options, offer greater support for long-term recovery, and strengthened law enforcement provisions on drug dispensing.⁴ The State Senate’s Joint Task Force on Heroin and Opioid Addiction also released a report with more than 30 recommendations for combating the addiction crisis.⁵

The Senate and Assembly last month passed a package of bills implementing many of the recommendations of these task forces.⁶

The bills were signed into law by the governor on June 22, 2016. The law amends the Public Health, Insurance, Education and Mental Hygiene Laws. The following is a summary of the most significant provisions of the new law.

Prevention

The new law reduces the supply of certain opioids that a physician or other authorized practitioner can initially prescribe from 30 days to seven days. After prescribing a seven-day supply, the practitioner can prescribe a renewal or refill, prescribe a new opioid, or issue another prescription for more than a seven-day supply. The seven-day limit applies only to prescription medication for “acute pain,” which the law defines as “...pain, whether resulting from disease, accidental or intentional trauma, or other cause that the practitioner reasonably expects to last only a short period of time.” It is important to note that the seven-day prescription limit does not apply to patients with chronic pain, pain being treated as part of cancer care, hospice or other end of life care, or pain being treated as part of palliative care practices.

The law also directs the Department of Health (DOH):

- to expand the DOH's tracking of data to include the number of opioid overdoses in addition to the number of opioid overdose deaths; and
- to examine which areas of the state are experiencing high rates of opioid overdoses; and
- to examine whether areas that have received state assistance and services have shown reduced overdose rates.

The law establishes a requirement that by July 1, 2017, and every three years thereafter, all licensed prescribers of opioid medications who have a Drug Enforcement Administration (DEA) provider number, or those who prescribe under a facility's DEA provider number (such as medical interns and residents working in hospitals) complete three hours of course work to be developed by the state in pain management, palliative care, and addiction in order to increase their awareness of the risks of opioid addiction. Prescribing practitioners must submit attestations to DOH indicating their compliance with these training and course work requirements.

Facilities must attest that any practitioners who prescribe controlled substances for pain management under the facilities' DEA number have completed the required training and course work. Exemptions from this requirement are available for those who can clearly demonstrate to DOH that they have no

need to complete the course work or training, or that they have completed equivalent course work or training. This course work can be applied toward mandatory continuing education requirements.

The law requires OASAS, in consultation with DOH, to create educational materials about misuse of and the potential for addiction to prescription drugs, available treatment resources, and proper disposal

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of unused drugs. These materials will be distributed by pharmacies to consumers when any type of prescribed controlled substances are dispensed, and at the consumer's option, may be received by the consumer through electronic means.

Payor Requirements

The new law exempts substance abuse treatment services from prior approval by payors, and requires payors to cover necessary inpatient services for up to a minimum of 14 days or as long as medically necessary, as long as the facility treating the patient notifies the payor within 48 hours of the patient's admission and the initial treatment

plan. It also mandates that utilization review (i.e., concurrent or retrospective review of the medical necessity of substance abuse services by the payor) can begin only after the patient's first 14 days of treatment, in order to ensure a period of uninterrupted care. The law also ends prior approvals for prescribed medications enabling patients to manage their withdrawal symptoms or maintain the progress of their recovery.

Utilization review by the payor that begins after the first 14 days of inpatient treatment may include a review of all services provided during the inpatient treatment, including the first 14 days. A payor can subsequently deny coverage for any portion of the initial 14-day inpatient treatment, only on the basis that such treatment was contrary to the evidence-based and peer-reviewed clinical review criteria that have been approved by OASAS. However, the patient will not have any financial obligation to the facility for any treatment other than for any copayment, coinsurance or deductible required under the patient's health insurance policy.

The law requires payors that provide coverage for substance abuse medications to cover immediate access to a five-day supply of prescribed medication for management of opioid withdrawal or stabilization, without prior approval, where an emergency condition exists.

In enacting the law, the Legislature wanted to standardize the clinical criteria used by payors and their

utilization review organizations in determining the appropriate level of care when patients are undergoing substance abuse treatment. Accordingly, the new law requires payors operating in New York State to use only OASAS-approved criteria when making coverage determinations for all substance abuse treatment.

Treatment

The law requires facilities in New York that provide inpatient substance abuse treatment services to perform a daily clinical review of each patient, including periodic consultation with the patient's insurer to confirm that the facility is using the evidence-based and peer-reviewed clinical criteria approved by OASAS and appropriate to the age of the patient, to ensure that the inpatient treatment is medically necessary for the patient.

The law directs OASAS, in consultation with DOH, to develop or utilize existing educational materials for hospitals to distribute to individuals with a documented substance abuse problem, or who appear to be or are at risk for substance abuse, as they are being assessed for discharge from the hospital. These materials are to include information about the availability of various types of inpatient, outpatient, and medication-assisted treatment; how to recognize the need for treatment services; information enabling individuals to determine what type and level of treatment is most appropriate; and what treatment resources are available to them.

If they do not already have them, hospitals are required to develop, maintain and disseminate written policies and procedures for the identification, assessment and referral of individuals at risk of or who have a documented substance abuse problem, and to implement proper training for their licensed professionals who provide direct patient care to patients with substance abuse problems. In situations where a hospital does not itself provide substance abuse services, the law requires the hospital to refer patients needing such services to substance abuse service providers. Upon admission or discharge (including discharge from an emergency room) of any patient with a documented substance abuse problem, or who appears to be at risk of a substance abuse problem, the hospital is required to inform the patient of substance abuse treatment services that may be available to the patient.

Conclusion

It remains to be seen whether this law and other state and federal statutes that have been enacted in recent years will have any meaningful impact on lessening either opioid addiction or opioid overdoses. A public that is better informed about the dangerous addictiveness of opioids, together with efforts by physicians and other prescribing practitioners to rein in unnecessary opioid use by their patients, and more and better treatment options, are all necessary to curb this serious public health problem.



1. Substance Abuse and Mental Health Services Administration, Results from the 2011 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-44, HHS Publication No. (SMA) 12-4713. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2012.

2. CDC, Increases in Drug and Opioid Overdose Deaths—United States, 2000-2014. CDC. Available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm64e1218a1.htm>. December 18, 2015.

3. Trust for America's Health and the Robert Wood Johnson Foundation, The Facts Hurt: A State-By-State Injury Prevention Policy Report. June 2015. Available at <http://www.healthyamericans.org/reports/injuryprevention15/>.

4. June, 15, 2016, Heroin and Opioid Task Force, "Combatting the Heroin and Opioid Crisis," found at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/HeroinTaskForceReport_3.pdf.

5. Report of the Joint Senate Task Force on Heroin and Opioid Addiction, May 17, 2016, found at https://www.nysenate.gov/sites/default/files/htf_report_final2.pdf.

6. Chapter 71 of the Laws of 2016.