

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
S.P. 338 - L.D. 1031

An Act To Clarify the Opioid Medication Prescribing Limits Laws

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Public Law 2015, chapter 488 enacted a number of changes to the laws governing the Controlled Substances Prescription Monitoring Program and the prescribing and dispensing of opioid medication and other drugs; and

Whereas, health care providers need clarification of palliative care and serious illness exemptions to the opioid limit of 100 morphine milligram equivalents per day; and

Whereas, surgical procedures routinely require higher dosages than the current opioid limit laws allow and clarification to the law is necessary immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1726, sub-§1, ¶¶A and B, as enacted by PL 2015, c. 203, §2, are amended to read:

A. "Palliative care" means patient-centered and family-focused medical care that optimizes quality of life by anticipating, preventing and treating suffering caused by a medical illness or a physical injury or condition that substantially affects a patient's quality of life, including, but not limited to, addressing physical, emotional, social and spiritual needs; facilitating patient autonomy and choice of care; providing access to information; discussing the patient's goals for treatment and treatment options, including, when appropriate, hospice care; and managing pain and symptoms comprehensively. Palliative care does not always include a requirement for hospice care or attention to spiritual needs.

B. "Serious illness" means a medical illness or physical injury or condition that substantially affects quality of life for more than a short period of time. "Serious illness" includes, but is not limited to, Alzheimer's disease and related dementias, lung disease, cancer ~~and~~, heart, renal or liver failure and chronic, unremitting or intractable pain such as neuropathic pain.

Sec. 2. 22 MRSA §7246, sub-§2, as enacted by PL 2003, c. 483, §1, is amended to read:

2. Dispenser. "Dispenser" means a pharmacist who is licensed or registered under Title 32 ~~or a licensed health care professional with authority to dispense or administer prescription drugs.~~

Sec. 3. 22 MRSA §7249, sub-§1, as amended by PL 2011, c. 657, Pt. AA, §68, is further amended to read:

1. Information required. ~~Each~~ Except as provided in subsection 1-A, each dispenser shall submit to the department, by electronic means or other format specified in a waiver granted by the department, specific items of information regarding dispensed controlled substances determined by the office from the following list:

- A. The dispenser identification number;
- B. The date the prescription was filled;
- C. The prescription number;
- D. Whether the prescription is new or is a refill;
- E. The National Drug Code (NDC) for the drug dispensed;
- F. The quantity dispensed;
- G. The dosage;
- H. The patient identification number;
- I. The patient name;
- J. The patient address;
- K. The patient date of birth;
- L. The prescriber identification number;
- M. The date the prescription was issued by the prescriber; and
- N. The department-issued serial number if the department chooses to establish a serial prescription system.

Sec. 4. 22 MRSA §7249, sub-§1-A is enacted to read:

1-A. Small quantity dispensing. If a controlled substance is dispensed by a hospital emergency department to a person receiving care in the emergency department for use by that person during a period of 48 hours or less after the controlled substance is dispensed, the dispenser is not required to comply with subsection 1.

Sec. 5. 22 MRSA §7250, sub-§4, ¶¶I and J, as amended by PL 2017, c. 87, §1, are further amended to read:

I. Staff members of a licensed hospital who are authorized by the chief medical officer of the hospital, insofar as the information relates to a patient receiving care in the hospital's emergency department or receiving inpatient services or surgical services from the hospital;

J. Staff members of a pharmacist who are authorized by the pharmacist on duty, insofar as the information relates to a customer seeking to have a prescription filled; ~~and~~

Sec. 6. 22 MRSA §7250, sub-§4, ¶K, as enacted by PL 2017, c. 87, §2, is amended to read:

K. The chief medical officer, medical director or other administrative prescriber employed by a licensed hospital, insofar as the information relates to prescriptions written by prescribers employed by that licensed hospital; ~~and~~

Sec. 7. 22 MRSA §7250, sub-§4, ¶L is enacted to read:

L. Staff members of a group practice of prescribers who are authorized by a designated group practice leader, insofar as the information relates to a patient receiving care from that group practice.

Sec. 8. 22 MRSA §7253, sub-§2, as enacted by PL 2015, c. 488, §9, is amended to read:

2. Dispensers. On or after January 1, 2017, a dispenser shall check prescription monitoring information prior to dispensing a benzodiazepine or an opioid medication to a person under any of the following circumstances:

- A. The person is not a resident of this State;
- B. The prescription is from a prescriber with an address outside of this State;
- C. The person is paying cash when the person has prescription insurance on file; or
- D. According to the pharmacy prescription record, the person has not had a prescription for a benzodiazepine or an opioid medication in the previous 12-month period.

A dispenser shall ~~notify the program and~~ withhold a prescription until the dispenser is able to contact the prescriber of that prescription if the dispenser has reason to believe that the prescription is fraudulent or duplicative.

Sec. 9. 22 MRSA §7253, sub-§3, as repealed and replaced by PL 2017, c. 122, §1, is amended to read:

3. Exceptions. The requirements to check prescription monitoring information established in this section do not apply:

A. When a licensed or certified health care professional directly orders or administers a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure; or

B. When a licensed or certified health care professional directly orders, prescribes or administers a benzodiazepine or opioid medication to a person suffering from pain associated with end-of-life or hospice care.

Sec. 10. 22 MRSA §7253, sub-§5, as enacted by PL 2015, c. 488, §9, is repealed.

Sec. 11. 22 MRSA §7254, sub-§2, as enacted by PL 2015, c. 488, §9, is amended to read:

2. Rulemaking. Notwithstanding section 7252, no later than January 1, 2017, the department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to establish reasonable exceptions to prescriber limits in Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308, including for chronic pain and acute pain. The rules must take into account clinically appropriate exceptions and include prescribers in the rule-making process including the drafting of draft rules and changes after the public hearing process to the extent permitted by Title 5, chapter 375. After July 1, 2017, any rules adopted by the department pursuant to this section are governed by section 7252.

Sec. 12. 32 MRSA §2210, sub-§1, ¶D, as enacted by PL 2015, c. 488, §13, is amended to read:

D. On or after January 1, 2017, within a 7-day period, more than a 7-day supply of an opioid medication to a patient under treatment for acute pain unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount dispensed may not exceed a 14-day supply. "Acute pain" has the same meaning as in Title 22, section 7246, subsection 1-A.

Sec. 13. 32 MRSA §2210, sub-§2, ¶B, as enacted by PL 2015, c. 488, §13, is amended to read:

B. When directly ordering or administering a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure.

As used in this paragraph, "administer" has the same meaning as in Title 22, section 7246, subsection 1-B.

Sec. 14. 32 MRSA §2600-C, sub-§1, ¶D, as enacted by PL 2015, c. 488, §17, is amended to read:

D. On or after January 1, 2017, within a 7-day period, more than a 7-day supply of an opioid medication to a patient under treatment for acute pain unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount

dispensed may not exceed a 14-day supply. For purposes of this paragraph, "acute pain" has the same meaning as in Title 22, section 7246, subsection 1-A.

Sec. 15. 32 MRSA §2600-C, sub-§2, ¶B, as enacted by PL 2015, c. 488, §17, is amended to read:

B. When directly ordering or administering a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure.

As used in this paragraph, "administer" has the same meaning as in Title 22, section 7246, subsection 1-B.

Sec. 16. 32 MRSA §3300-F, sub-§1, ¶D, as enacted by PL 2015, c. 488, §20, is amended to read:

D. On or after January 1, 2017, within a 7-day period, more than a 7-day supply of an opioid medication to a patient under treatment for acute pain unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount dispensed may not exceed a 14-day supply. "Acute pain" has the same meaning as in Title 22, section 7246, subsection 1-A.

Sec. 17. 32 MRSA §3300-F, sub-§2, ¶B, as enacted by PL 2015, c. 488, §20, is amended to read:

B. When directly ordering or administering a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure.

As used in this paragraph, "administer" has the same meaning as in Title 22, section 7246, subsection 1-B.

Sec. 18. 32 MRSA §3657, sub-§1, ¶D, as enacted by PL 2015, c. 488, §23, is amended to read:

D. On or after January 1, 2017, within a 7-day period, more than a 7-day supply of an opioid medication to a patient under treatment for acute pain unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount dispensed may not exceed a 14-day supply. "Acute pain" has the same meaning as in Title 22, section 7246, subsection 1-A.

Sec. 19. 32 MRSA §3657, sub-§2, ¶B, as enacted by PL 2015, c. 488, §23, is amended to read:

B. When directly ordering or administering a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure.

As used in this paragraph, "administer" has the same meaning as in Title 22, section 7246, subsection 1-B.

Sec. 20. 32 MRSA §18308, sub-§1, ¶D, as enacted by PL 2015, c. 488, §32, is amended to read:

D. On or after January 1, 2017, within a 7-day period, more than a 7-day supply of an opioid medication to a patient under treatment for acute pain unless the opioid product is labeled by the federal Food and Drug Administration to be dispensed only in a stock bottle that exceeds a 7-day supply as prescribed, in which case the amount dispensed may not exceed a 14-day supply. For purposes of this paragraph, "acute pain" has the same meaning as in Title 22, section 7246, subsection 1-A.

Sec. 21. 32 MRSA §18308, sub-§2, ¶B, as enacted by PL 2015, c. 488, §32, is amended to read:

B. When directly ordering or administering a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure.

As used in this paragraph, "administer" has the same meaning as in Title 22, section 7246, subsection 1-B.

Sec. 22. Department of Health and Human Services to amend rules. The Department of Health and Human Services, office of substance abuse and mental health services shall amend its rules in Chapter 11, Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications so that the rules conform to those sections of this Act that amend the Maine Revised Statutes, Title 22, section 7246, subsection 2 and section 7253, subsection 2. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that any subsequent amendments to those rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.