SB 273 – New Limits on Opioid Prescriptions Change the Game for West Virginia Hospitals and Physicians

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SB 273 is an important first step in implementing the West Virginia Opioid Response Plan, announced by the State of West of Virginia on January 30, 2018.

As of June 7, the following limits on opioid prescriptions apply in West Virginia:

Initial Prescription Limits

- Adults receiving an initial opioid prescription in an emergency room (ER) are limited to a four (4)-day supply of opioid pain medicine.
- Minors in the ER are limited to a three (3)-day supply, and the ER physician must explain the risks of addiction to the parents of the minor.
- Private practices are limited to prescribing to their patients a maximum seven (7) day supply which must be the lowest effective dose which in the physician's best medical judgment is the best course of treatment.
- Dentists and optometrists are limited to prescribing a three (3)-day supply of opioid pain medicine.

These limitations are designed to minimize the risk of patients becoming addicted to opioids and to avoid the risks of diversion by limiting the prescriptions to a strict "as needed" basis.

Subsequent Prescription Limits

- Within six (6) days of an initial prescription for opioids, a practitioner may issue a new prescription if: a) it is not an initial prescription, b) the prescription is necessary and

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appropriate for treatment, c) the specific rationale for treatment is documented, and d) the practitioner documents that the subsequent prescription does not present an undue risk of abuse, addiction or diversion.

- Schedule II drugs are subject to a maximum 30-day supply with two (2) additional 30-day supplies if the physician monitors the Controlled Substances Monitoring Program Database.
- Prescriptions longer than seven (7) days require a narcotics contract with the patient that specifies: a) the client may only obtain narcotics from this specific practitioner, b) the patient must obtain the Schedule II narcotics at a specific pharmacy, c) the patient must notify the practitioner within 24 hours if the patients gets an emergency prescription of Schedule II narcotics, and d) if the patient fails to follow the agreement, the practitioner can either terminate the patient relationship or treat the patient without Schedule II drugs.
- Limitations on subsequent prescriptions do not apply to cancer patients, patients receiving palliative care, residents of long-term facilities. or patients receiving medication to treat substance abuse or opioid dependence.
- Physicians are required to discuss the addiction and overdose risks with patients or parents of minors, explain why the pain medicine is needed, and detail alternative treatments that may be obtained instead of the opioid prescriptions.
- Practitioners must explain and document that opioids are highly addictive, and that even if taken as prescribed, there is serious risk of developing physical or psychological dependence.
- Practitioners must also advise clients as to the risks of taking more than prescribed, and that mixing sedatives, benzodiazepines or alcohol with opioid prescriptions can result in respiratory depression.

Other Important Requirements

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- Voluntary, non-opioid advance directives are now available to indicate that a patient refuses treatment with opioids.
- An exemption of certain Medication-Assisted Treatment Programs serving less than 30 patients from registering as a pain clinic will be available.

These limitations and requirements for prescribing opioids impose important limitations and changes to treatment protocols and documentation requirements. Hospitals and physicians alike are well advised to review the changes imposed by SB 273, and to revise their treatment protocols and documentation requirements to comply with the strict rules. By adding these limits, positive requirements and additional documentation standards, West Virginia is significantly raising the bar to limit access to opioids to address the ongoing opioid crisis. However, practitioners fear that the benefits may be offset by increased challenges in treating patients with significant pain, and that the changes will increase the costs of care, while negatively affecting the quality of care for many West Virginians.

In addition, these changes will likely have a serious impact on risk management for hospital-based and independent practitioners that prescribe opioids, including serious ramifications for both over-prescribing and under-prescribing, and for not meeting the specific requirements of SB 273.

Finally, even though these limitations are imposed by law, important conflicts remain for licensed professionals who must navigate many competing concerns to properly treat patients with pain issues, properly document their decisions, meet ethical guidelines and avoid disciplinary actions and lawsuits.

If you require further information regarding the above, please contact Charles M. Johnson (at cmjohnson@fbtlaw.com or 304.348.2420) or any other member of Frost Brown Todd's Health Care Industry Team.

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