



Turning the Tide of the OPIOID CRISIS: Legislative and Litigation Responses

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It seems that you can hardly turn on the news without hearing about the “opioid crisis” – the term being used to describe the alarming addiction and overdose rates connected with prescription opioid pain relievers. The Centers for Disease Controls devotes an entire section of its website to Opioid Overdose, and cites statistics which indicate there are as many as 89 total deaths per day involving overdoses of all categories of opioids and 47 of those involve only prescription opioids .

While awareness of this issue has been growing for several years, public health data continues to show that addiction and overdose incidents attributable to prescription opioids is increasing. This article provides an overview of federal and state level legislative and regulatory responses to the opioid crisis, discusses civil lawsuits brought against physicians involving prescription opioid issues, and offers Wyoming providers practical steps to ensure they are minimizing their liability risk when using prescription opioids as part of a patient’s treatment.

Federal Response

In October, 2017, President Trump, along with the Department of Health and Human Services (HHS), declared a public health emergency to address the national opioid crisis. HHS announced a five-point strategy to combat the opioid crisis, including:

- Improving access to treatment and recovery services

ery services

- Promoting the use of overdose-reversing drugs
- Strengthens understanding of the epidemic through better public health surveillance
- Providing support for cutting-edge research on pain and addiction; and
- Advancing better practices for pain management.

The declaration has been criticized as lacking specific funding to implement specific programs to carry out these strategies; however, a number of legislative bills currently are under consideration by the House or Senate. “Jesse’s Law,” which has passed in the Senate and is pending in the House, would require the Secretary of Health and Human Services to develop best practices related to prominently displaying a patient’s history of opioid use disorder in the patient’s medical records. The law’s namesake, Jesse Grub, was a recovering addict who was prescribed opioid painkillers after surgery by a discharging physician who was not informed of her addiction history. Ms. Grub fatally overdosed the day after her discharge .

Other proposed federal legislation includes the Opioid Workforce Act of 2018 (H.R. 5818, S. 2843), which has been introduced in both houses, and would add 1,000 Medicare-funded direct and indirect graduate medical education residency training slots to hospitals with approved residency programs in addiction medicine, addiction psychiatry, or pain management. The Opioid Crisis Response Act of 2018 (S.2680), contains proposals arising from bipartisan hearings on the opioid

crisis and would authorize federal agencies to implement specific public health activities, including supporting research and development of non-addictive painkillers, establishing opioid prescription practices, collecting and monitoring data about prescription of and overdoses related to controlled substances, and providing funding for states to implement targeted interventions.

Wyoming State-Level Response

The Wyoming legislature passed the Emergency Administration of Opiate Antagonist Act during the 2017 legislative session. This legislation allows a pharmacist to prescribe and dispense an opiate antagonist, such as Narcan, to (a) a person who is at risk of an opiate overdose, (b) a person who is in a position to assist a person at risk of an opiate overdose, or (c) a person who in the course of their official duties or business may encounter a person experiencing an opiate related drug overdose. This legisla-

tion makes it possible for family members of a person taking opioid painkillers, as well as first responders and workers in other public-facing environments, to obtain a naloxone auto-injector or nasal spray for use if they encounter an overdose situation.

Wyoming has had a prescription drug monitoring database (PDMP) since 2004, known as the Wyoming Online Prescription Database (WORx). Until recently, only retail pharmacies were required to report prescriptions for controlled substances dispensed to residents of Wyoming. However, during the 2018 session, the Wyoming enacted legislation to require all dispensing practitioners

(including veterinarians, dentists, physicians, and nurse practitioners) to report to the WORx. The 2018 legislature also required all practitioners to register for the WORx, enabling them to review controlled substances their patients may have been prescribed by other practitioners.

The Wyoming legislature did not go as far as a handful of other states which have enacted mandatory PDMP checks, or legislation establishing prescribing guidelines or limits on prescriptions of controlled substances.

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