Taneeka Hansen

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Sent: Wednesday, March 23, 2016 7:53 AM
To: Taneeka Hansen
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Subject: Concerns and recommendations for revision of HB 344

Follow Up Flag: Follow up
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Dear Rep. Seaton and members of the Health and Social Services Committee:

Thank you for your efforts to improve the safety of Alaskans who receive prescriptions for controlled substances. HB 344 contains important provisions to help protect Alaskans against the epidemic of prescription opioid overdose deaths by encouraging utilization of Alaska's PDMD. PDMDs are an essential component of controlled substance regulation. However, I am concerned HB 344 may have unintended consequences if it is passed as currently written. I am writing to suggest revisions that will avoid unintended consequences. I am a board-certified medical psychiatrist, editorial board member for a publication that educates physicians about addiction, and I treat patients with addiction every day. Therefore, I am qualified to advise the legislature with respect to Alaska's controlled substance problems and how legislation may successfully address them.

Please consider the following areas of concern and recommended revisions to HB 344:

1. Sections 1, 4, 10 and 13: These Sections create grounds for the imposition of disciplinary sanctions, and they include language similar to the following:

"The board may revoke or suspend the license [of a practitioner] or may reprimand, censure or discipline [a practitioner] or both [sic], if the board finds after a hearing that [the practitioner]...(7) continued to practice after becoming unfit due to...(B) addiction or severe dependency on alcohol or other drugs which impairs [sic] the person's ability to practice safely."

This language appears to render drug addiction, which is a diagnosable medical illness, a basis for licensure sanctions. This could violate of Title IX of the Civil Rights Act, the Americans with Disabilities Act and other federal and state anti-discrimination laws. Additionally, Robinson v. California, U.S. Supreme Court 1962, and Driver v Hinnant, Fourth Circuit Court of Appeals 1966 found statutes that criminalized the status of narcotic addiction unconstitutional under the 8th and 14th Amendments. Designating addiction as the basis of professional licensure sanctions may be similarly unconstitutional.

In order to avoid constitutional and other legal challenges, HB 344 should be amended to read "..intoxication with alcohol or other drugs which impair the person's ability to practice safely."

2. Section 15: This Section mandates that all controlled substance prescriptions be reported to the PDMD. However, methadone prescriptions, when written for treatment of opioid dependence, are covered by

the privacy provisions of 42 CFR Part 2. Reporting these prescriptions to a state PDMD would be a violation of federal privacy law. For this reason, other states with PDMDs do not include methadone clinic prescriptions in their PDMD reporting requirements.

In order to avoid legal challenges and potential for the federal government to enforce privacy actions actions against Alaskan pharmacists and practitioners, HB 344 should be amended to exclude methadone clinics from PDMD reporting requirements.

3. Section 19: This Section, in combination with other Sections, requires prescribers to "review" the PDMD before each and every controlled substance prescription--under threat of licensure sanction for failure to do so. Although it would be desirable for prescribers to check the PDMD before every prescription, requiring them to do so is unreasonable for the following reasons:

a. Among other reasons, Alaskan prescribers underutilize Alaska's PDMD because its user interface makes access so difficult and time-consuming that there is no realistic way to fit database review into the average prescriber's schedule without compromising other aspects of patient care. Thus, the most appropriate way to increase prescribers' use of the PDMD is to ensure the PDMD is usable in everyday medical practice, not to punish practitioners who fail to use it.

b. Few if any prescribers will be able to comply with a 100% PDMD review requirement, even if they do not qualify for a technical or infrastructure barrier under this Section. This is because 100% compliance with any regulation is a virtual impossibility in any service industry, including medicine. Subjecting prescribers who fail to comply 100% of the time with licensure sanction--one of the most feared, stigmatizing and career-destroying events a doctor or other health professional can face--is unrealistic and unfair. Such a threat may discourage practitioners from moving to or remaining in Alaska, and thereby exacerbate our state's existing provider shortage.

c. Many medications commonly prescribed for insomnia, anxiety and attention-deficit hyperactivity disorder are scheduled, yet--even among addicts--they have very little potential for lethal overdose compared with opioids. Although it is desirable for prescribers to review PDMD data periodically for patients receiving prescriptions for these substances, it does not make sense to require PDMD review before each and every prescription for benzodiazepines or stimulants. Today's health care economy requires efficiency, and efficiency requires eliminating costly activities that contribute little to safety or quality of care. Requiring prescribers to review the PDMD before each and every benzodiazepine and stimulant prescription will impose disproportionate costs on Alaska's health care system, but will not provide commensurate gains in safety or quality.

d. A multitude of conditions may affect the average prescriber's ability to access the PDMD at any given moment. These include whether or not the internet is working; whether the PDMD is down for maintenance; whether the prescriber's password suddenly expired; whether the licensed designee responsible for checking the PDMD called in sick; whether the prescriber is behind schedule due to an emergency; whether the patient has to get back to work or pick up a child from day care; and a multitude of other contingencies. Patients should not have to forego needed prescriptions because of fluctuating practical conditions beyond their control, and prescribers should not face licensure sanctions because of those same uncontrollable variables.

Alaska's PDMD laws should be designed to increase patient safety without imposing costly burdens that add little benefit, forcing patients to go without needed prescriptions, or threatening the state's already shorthanded medical workforce with arbitrary licensure sanctions that could induce them to leave and practice elsewhere. To accomplish those goals, HB 344 should be revised to:

-Require prescribers to check the PDMD within 30 days for each patient to whom they prescribe any scheduled medication, including medications classified as opioids; and

-Require prescribers to check the PDMD no more frequently than once annually for patients to whom they prescribe scheduled medications that are not classified as opioids; and

-Hold prescribers harmless from any licensure action for failure to review the PDMD when such failure is due to the non-functionality of the PDMD itself.

Thank you for considering these recommended revisions. PDMDs are an essential part of any state's effort to prevent overdose deaths and to reduce diversion and abuse of controlled substance prescriptions. With these revisions, HB 344 is more likely to accomplish those goals.

Sincerely,

Joshua Sonkiss, MD