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## **An Act To Establish Reasonable and Clinically Appropriate Exceptions to Opioid Medication Prescribing Limits**

**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,** the law requires that, beginning July 1, 2017, the aggregate amount of opioid medication prescribed to a patient may not be in excess of 100 morphine milligram equivalents per day; and

**Whereas,** health care providers have been working and will continue to work with those patients who have been taking medication in excess of this limit to develop a tapering plan to reduce their dose to the statutorily required limit by July 2017; and

**Whereas,** there exist certain patients who, based on their prior dosage, medical history and current function, in their doctors' medical opinions cannot safely have their dosages tapered by the deadline established in the law; and

**Whereas,** it is essential that for these individuals there be a system in place to provide to health care providers, on a case-by-case basis, the ability for a specified period to prescribe doses in excess of 100 morphine milligram equivalents per day; 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 §7255** is enacted to read:

### **§ 7255. Prescription exceeding opioid medication limits; medical necessity**

In addition to the exceptions set forth in Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308, a prescriber in accordance with this section may prescribe, based on medical necessity, opioid medication in an amount greater than the morphine milligram equivalents limits set out in Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308.

**1. Documentation of medical necessity.** If, in the prescriber's judgment, it is medically necessary to prescribe opioid medication in an amount greater than the morphine milligram equivalents limits set out in Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308, a prescriber shall document that medical necessity in accordance with this subsection, and in the patient's medical records shall:

A. Specify the medical necessity of opioid dosing greater than 100 morphine milligram equivalents per day;

B. Confirm that an appropriate pain history and physical examination have been completed and documented;

C. Confirm the failure of the following alternative treatments:

(1) Nonsteroidal anti-inflammatory drugs;

(2) Adjunctive medicines, including antidepressants and anticonvulsants;

(3) Physical therapy, occupational therapy or exercise;

(4) Cognitive behavioral therapy or acceptance and commitment therapy; and

(5) Counseling and treatment regarding lifestyle changes, including diet and smoking cessation;

D. Confirm that a taper trial resulted in significant loss of function and that larger doses are necessary;

E. Confirm the use of an opioid risk assessment tool and document the management of opioid risk, including:

(1) If the patient has a substance use disorder or alcohol use disorder, documentation of a substance use disorder or alcohol use disorder treatment plan; and

(2) Compliance with section 7253, subsection 1;

F. Confirm that a patient-provider controlled medication agreement is completed annually and is on file with the prescriber;

G. Confirm that patient documentation of informed consent is completed annually and is on file with the prescriber; and

H. Confirm that random urine drug testing demonstrates appropriate use by the patient.

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

**2. Exceptions.** An individual licensed under this chapter whose scope of practice includes prescribing opioid medication is exempt from the limits on opioid medication prescribing established in subsection 1 only:

A. When prescribing opioid medication to a patient for:

- (1) ~~Pain~~For pain associated with active and aftercare cancer treatment;
- (2) ~~Palliative~~For palliative care, as defined in Title 22, section 1726, subsection 1, paragraph A, in conjunction with a serious illness, as defined in Title 22, section 1726, subsection 1, paragraph B;
- (3) ~~End-of-life~~For end-of-life and hospice care;
- (4) ~~Medication-assisted~~For medication-assisted treatment for substance use disorder; or
- (5) ~~Other circumstances determined in rule by the Department of Health and Human Services pursuant to Title 22, section 7254, subsection 2; and~~
- (6) For postoperative or new-onset acute pain when the patient has an existing opioid prescription for chronic pain;
- (7) Pursuing an active taper of opioid medications, with a maximum taper period of 6 months;
- (8) Who is pregnant and who has a preexisting prescription for opioids in excess of the limit. This exemption applies only during the duration of the pregnancy; or
- (9) That is medically necessary, in the prescriber's judgment, and the prescriber has documented that medical necessity in accordance with Title 22, section 7255; and

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.

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

**Sec. 3. 32 MRSA §2600-C, sub-§2**, as enacted by PL 2015, c. 488, §17, is amended to read:

**2. Exceptions.** An individual licensed under this chapter whose scope of practice includes prescribing opioid medication is exempt from the limits on opioid medication prescribing established in subsection 1 only:

A. When prescribing opioid medication to a patient for:

- (1) ~~Pain~~For pain associated with active and aftercare cancer treatment;
- (2) ~~Palliative~~For palliative care, as defined in Title 22, section 1726, subsection 1, paragraph A, in conjunction with a serious illness, as defined in Title 22, section 1726, subsection 1, paragraph B;
- (3) ~~End-of-life~~For end-of-life and hospice care;
- (4) ~~Medication-assisted~~For medication-assisted treatment for substance use disorder; ~~or~~
- (5) ~~Other circumstances determined in rule by the Department of Health and Human Services pursuant to Title 22, section 7254, subsection 2; and~~
- (6) For postoperative or new-onset acute pain when the patient has an existing opioid prescription for chronic pain;
- (7) Pursuing an active taper of opioid medications, with a maximum taper period of 6 months;
- (8) Who is pregnant and who has a preexisting prescription for opioids in excess of the limit. This exemption applies only during the duration of the pregnancy; or
- (9) That is medically necessary, in the prescriber's judgment, and the prescriber has documented that medical necessity in accordance with Title 22, section 7255; and

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.

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

**Sec. 4. 32 MRSA §3300-F, sub-§2**, as enacted by PL 2015, c. 488, §20, is amended to read:

**2. Exceptions.** An individual licensed under this chapter whose scope of practice includes prescribing opioid medication is exempt from the limits on opioid medication prescribing established in subsection 1 only:

A. When prescribing opioid medication to a patient for:

- (1) ~~Pain~~For pain associated with active and aftercare cancer treatment;
- (2) ~~Palliative~~For palliative care, as defined in Title 22, section 1726, subsection 1, paragraph A, in conjunction with a serious illness, as defined in Title 22, section 1726, subsection 1, paragraph B;
- (3) ~~End-of-life~~For end-of-life and hospice care;
- (4) ~~Medication-assisted~~For medication-assisted treatment for substance use disorder; ~~or~~
- (5) ~~Other circumstances determined in rule by the Department of Health and Human Services pursuant to Title 22, section 7254, subsection 2; and~~
- (6) For postoperative or new-onset acute pain when the patient has an existing opioid prescription for chronic pain;
- (7) Pursuing an active taper of opioid medications, with a maximum taper period of 6 months;
- (8) Who is pregnant and who has a preexisting prescription for opioids in excess of the limit. This exemption applies only during the duration of the pregnancy; or
- (9) That is medically necessary, in the prescriber's judgment, and the prescriber has documented that medical necessity in accordance with Title 22, section 7255; and

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.

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

**Sec. 5. 32 MRSA §3657, sub-§2**, as enacted by PL 2015, c. 488, §23, is amended to read:

**2. Exceptions.** An individual licensed under this chapter whose scope of practice includes prescribing opioid medication is exempt from the limits on opioid medication prescribing established in subsection 1 only:

A. When prescribing opioid medication to a patient ~~for~~:

- (1) ~~Pain~~For pain associated with active and aftercare cancer treatment;

(2) ~~Palliative~~For palliative care, as defined in Title 22, section 1726, subsection 1, paragraph A, in conjunction with a serious illness, as defined in Title 22, section 1726, subsection 1, paragraph B;

(3) ~~End-of-life~~For end-of-life and hospice care;

(4) ~~Medication-assisted~~For medication-assisted treatment for substance use disorder; ~~or~~

(5) ~~Other circumstances determined in rule by the Department of Health and Human Services pursuant to Title 22, section 7254, subsection 2; and~~

(6) For postoperative or new-onset acute pain when the patient has an existing opioid prescription for chronic pain;

(7) Pursuing an active taper of opioid medications, with a maximum taper period of 6 months;

(8) Who is pregnant and who has a preexisting prescription for opioids in excess of the limit. This exemption applies only during the duration of the pregnancy; or

(9) That is medically necessary, in the prescriber's judgment, and the prescriber has documented that medical necessity in accordance with Title 22, section 7255; and

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.

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

**Sec. 6. 32 MRSA §18308, sub-§2**, as enacted by PL 2015, c. 488, §32, is amended to read:

**2. Exceptions.** An individual licensed under this chapter whose scope of practice includes prescribing opioid medication is exempt from the limits on opioid medication prescribing established in subsection 1 only:

A. When prescribing opioid medication to a patient ~~for~~:

(1) ~~Pain~~For pain associated with active and aftercare cancer treatment;

(2) ~~Palliative~~For palliative care, as defined in Title 22, section 1726, subsection 1, paragraph A, in conjunction with a serious illness, as defined in Title 22, section 1726, subsection 1, paragraph B;

(3) ~~End-of-life~~For end-of-life and hospice care;

(4) ~~Medication-assisted~~For medication-assisted treatment for substance use disorder; or

(5) ~~Other circumstances determined in rule by the Department of Health and Human Services pursuant to Title 22, section 7254, subsection 2; and~~

(6) For postoperative or new-onset acute pain when the patient has an existing opioid prescription for chronic pain;

(7) Pursuing an active taper of opioid medications, with a maximum taper period of 6 months;

(8) Who is pregnant and who has a preexisting prescription for opioids in excess of the limit. This exemption applies only during the duration of the pregnancy; or

(9) That is medically necessary, in the prescriber's judgment, and the prescriber has documented that medical necessity in accordance with Title 22, section 7255; and

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.

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

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

## SUMMARY

Public Law 2015, chapter 488 requires that, beginning July 1, 2017, the aggregate amount of opioid medication prescribed to a patient may not be in excess of 100 morphine milligram equivalents per day and directs the Department of Health and Human Services to adopt rules establishing reasonable exceptions to those prescriber limits. This bill codifies in statute the exceptions adopted in the department's rules and adds an exception to prescribing limits for medical necessity.