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S.P. 338

In Senate, March 14, 2017

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

(EMERGENCY)

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator GRATWICK of Penobscot.
Cosponsored by Representative BERRY of Bowdoinham and
Senators: BRAKEY of Androscoggin, CUSHING of Penobscot, DILL of Penobscot, VOLK of
Cumberland, Representatives: BROOKS of Lewiston, CHACE of Durham, STANLEY of
Medway, TIPPING of Orono.

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

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

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

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

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

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

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

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

23 **Sec. 1. 22 MRSA §7255** is enacted to read:

24 **§7255. Prescription exceeding opioid medication limits; medical necessity**

25 In addition to the exceptions set forth in Title 32, sections 2210, 2600-C, 3300-F,
26 3657 and 18308, a prescriber in accordance with this section may prescribe, based on
27 medical necessity, opioid medication in an amount greater than the morphine milligram
28 equivalents limits set out in Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308.

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

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

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

- 1 C. Confirm the failure of the following alternative treatments:
- 2 (1) Nonsteroidal anti-inflammatory drugs;
- 3 (2) Adjunctive medicines, including antidepressants and anticonvulsants;
- 4 (3) Physical therapy, occupational therapy or exercise;
- 5 (4) Cognitive behavioral therapy or acceptance and commitment therapy; and
- 6 (5) Counseling and treatment regarding lifestyle changes, including diet and
- 7 smoking cessation;
- 8 D. Confirm that a taper trial resulted in significant loss of function and that larger
- 9 doses are necessary;
- 10 E. Confirm the use of an opioid risk assessment tool and document the management
- 11 of opioid risk, including:
- 12 (1) If the patient has a substance use disorder or alcohol use disorder,
- 13 documentation of a substance use disorder or alcohol use disorder treatment plan;
- 14 and
- 15 (2) Compliance with section 7253, subsection 1;
- 16 F. Confirm that a patient-provider controlled medication agreement is completed
- 17 annually and is on file with the prescriber;
- 18 G. Confirm that patient documentation of informed consent is completed annually
- 19 and is on file with the prescriber; and
- 20 H. Confirm that random urine drug testing demonstrates appropriate use by the
- 21 patient.

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

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

- 27 A. When prescribing opioid medication to a patient ~~for~~:
- 28 (1) ~~Pain~~ For pain associated with active and aftercare cancer treatment;
- 29 (2) ~~Palliative~~ For palliative care, as defined in Title 22, section 1726, subsection
- 30 1, paragraph A, in conjunction with a serious illness, as defined in Title 22,
- 31 section 1726, subsection 1, paragraph B;
- 32 (3) ~~End-of-life~~ For end-of-life and hospice care;
- 33 (4) ~~Medication-assisted~~ For medication-assisted treatment for substance use
- 34 disorder; ~~or~~
- 35 (5) ~~Other circumstances determined in rule by the Department of Health and~~
- 36 ~~Human Services pursuant to Title 22, section 7254, subsection 2; and~~

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

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

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

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

10 B. When directly ordering or administering a benzodiazepine or opioid medication to
11 a person in an emergency room setting, an inpatient hospital setting, a long-term care
12 facility or a residential care facility.

13 As used in this paragraph, "administer" has the same meaning as in Title 22, section
14 7246, subsection 1-B.

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

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

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

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

22 (2) ~~Palliative~~ For palliative care, as defined in Title 22, section 1726, subsection
23 1, paragraph A, in conjunction with a serious illness, as defined in Title 22,
24 section 1726, subsection 1, paragraph B;

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

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

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

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

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

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

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

1 B. When directly ordering or administering a benzodiazepine or opioid medication to
2 a person in an emergency room setting, an inpatient hospital setting, a long-term care
3 facility or a residential care facility.

4 As used in this paragraph, "administer" has the same meaning as in Title 22, section
5 7246, subsection 1-B.

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

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

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

- 12 (1) ~~Pain~~ For pain associated with active and aftercare cancer treatment;
- 13 (2) ~~Palliative~~ For palliative care, as defined in Title 22, section 1726, subsection
14 1, paragraph A, in conjunction with a serious illness, as defined in Title 22,
15 section 1726, subsection 1, paragraph B;
- 16 (3) ~~End-of-life~~ For end-of-life and hospice care;
- 17 (4) ~~Medication-assisted~~ For medication-assisted treatment for substance use
18 disorder; ~~or~~
- 19 (5) ~~Other circumstances determined in rule by the Department of Health and~~
20 ~~Human Services pursuant to Title 22, section 7254, subsection 2; and~~
- 21 (6) For postoperative or new-onset acute pain when the patient has an existing
22 opioid prescription for chronic pain;
- 23 (7) Pursuing an active taper of opioid medications, with a maximum taper period
24 of 6 months;
- 25 (8) Who is pregnant and who has a preexisting prescription for opioids in excess
26 of the limit. This exemption applies only during the duration of the pregnancy; or
- 27 (9) That is medically necessary, in the prescriber's judgment, and the prescriber
28 has documented that medical necessity in accordance with Title 22, section 7255;
29 and

30 B. When directly ordering or administering a benzodiazepine or opioid medication to
31 a person in an emergency room setting, an inpatient hospital setting, a long-term care
32 facility or a residential care facility.

33 As used in this paragraph, "administer" has the same meaning as in Title 22, section
34 7246, subsection 1-B.

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

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

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

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

23 B. When directly ordering or administering a benzodiazepine or opioid medication to
24 a person in an emergency room setting, an inpatient hospital setting, a long-term care
25 facility or a residential care facility.

26 As used in this paragraph, "administer" has the same meaning as in Title 22, section
27 7246, subsection 1-B.

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

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

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

- 34 (1) ~~Pain~~ For pain associated with active and aftercare cancer treatment;
- 35 (2) ~~Palliative~~ For palliative care, as defined in Title 22, section 1726, subsection
36 1, paragraph A, in conjunction with a serious illness, as defined in Title 22,
37 section 1726, subsection 1, paragraph B;
- 38 (3) ~~End-of-life~~ For end-of-life and hospice care;

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

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

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

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

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

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

14 B. When directly ordering or administering a benzodiazepine or opioid medication to
15 a person in an emergency room setting, an inpatient hospital setting, a long-term care
16 facility or a residential care facility.

17 As used in this paragraph, "administer" has the same meaning as in Title 22, section
18 7246, subsection 1-B.

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

21 **SUMMARY**

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