Hospice Controlled Substance Prescribing:

A Tale of Two States

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Texas Administrative Code

Texas Administrative Code, Title 22, Part 9, Rule 190.8
Violation Guidelines:

(ii) A proper professional relationship is also considered to exist between a patient certified as having a terminal illness and who is enrolled in a hospice program, or another similar formal program which meets the requirements of subclauses (i) through (iv) of this clause, and the physician supporting the program. To have a terminal condition for the purposes of this rule, the patient must be certified as having a terminal illness under the requirements of 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Service) and 42 CFR 418.22.
South Carolina

The South Carolina Board of Medical Examiners ("Board") has addressed the establishment of the physician-patient relationship as a prerequisite for prescribing in a separate advisory opinion. The Board recognizes, however, that physicians providing hospice care face a unique constellation of circumstances when prescribing for newly certified hospice patients and that those circumstances warrant an exception to the requirement of a physical examination prior to prescribing for a new patient set forth in S.C. Code Ann. § 40-47-113(A). Patients at the end of life deserve prompt and efficient management of pain and symptoms to ensure their quality of life is maintained in the best manner possible. Many patients are referred to certified hospice programs because they need aggressive symptom management and want to receive care outside the hospital setting. Failure to provide for these needs would cause unnecessary suffering and could lead to unwanted hospitalization.

South Carolina

Any licensed physician who is an employee of, or under contract with, a Medicare-certified hospice program with a qualified hospice program director may prescribe up to a 7-day supply of medications for a certified hospice patient for the purpose of controlling symptoms prior to establishing a traditional patient-physician relationship by a direct physical examination. The hospice physician or a licensed advanced practice registered nurse, a physician assistant, or other physician extender authorized by law and supervised by the hospice physician must conduct a direct physical examination before additional medication can be prescribed by the hospice physician, however, no more than an additional 7-day supply may be prescribed without a direct physical examination by the hospice physician.

South Carolina

All usage shall be documented and an appropriate medical record detailing a pain management plan shall be maintained for each patient as required by the Medical Practice Act. Physicians should not use this exception to routinely prescribe for hospice patients they have not examined.
South Carolina

The South Carolina Board of Medical Examiners has concluded that the prescription of medications, including opioids, for a certified hospice patient participating in a Medicare certified hospice program as described herein does not constitute misconduct if the hospice physician is familiar with and abides by acceptable medical guidelines regarding such use, is knowledgeable about effective and compassionate pain and symptom relief, and ensures the documentation of an appropriate symptom management plan. Hospice physicians are strongly encouraged to participate in continuing medical education activities specifically related to safe prescribing of controlled substances, symptom management and other topics pertinent to end of life care.

South Carolina

Prescribing for a patient whom the license has not personally examined may be suitable under certain circumstances. These may include admission orders for a newly hospitalized patient, medication orders or prescriptions, including pain management, from a hospice physician for a patient of another licensee for whom the prescriber is taking call, continued medication on a short-term basis for a new patient prior to the patient's first appointment, an appropriate prescription in a telemedicine encounter where the threshold information to make an accurate diagnosis has been obtained, or prescribing an opiate antagonist to someone in a position to assist a person at risk of an opiate-related overdose. Established patients may not require a new history and physical examination for each new prescription, depending on good medical practice.

North Carolina
Based on various comments and questions I have received and a current NCMB case there is a concern the “hospice exception” may be misinterpreted to permit ongoing long-term prescribing to hospice patients without any contact by the hospice physician with the patient at any time. The clear intent and context of the revision was to allow temporary or holding orders to insure continuity of care; for instance to hospice patients admitted over the weekend, etc. There is, however, a remote possibility this exception could be misapplied or misused.

Recommendation: Add the term “temporary, interim, or short term” to the medication orders or prescriptions including pain management, from a hospice physician for a patient admitted to a certain hospice program.