

NPHI POLICY BRIEF: HOSPICE PROVISIONS IN NEW FEDERAL OPIOID LEGISLATION

Overview

In late October 2018, President Trump signed into law the [Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment \(SUPPORT\) for Patients and Communities Act](#). This sweeping legislation, passed overwhelmingly by Congress, creates, expands and reauthorizes programs and policies across almost every federal agency, aiming to address different aspects of the opioid epidemic, including prevention, treatment and recovery.

The final bill incorporates two specific hospice-related provisions. The first provision ([Section 3222](#)) allows a hospice physician, nurse, or other properly licensed staff to assist in the disposal of controlled substances onsite that are expired, no longer needed by the patient because of a change in treatment, or left over after the patient dies. Under current federal law¹, hospices cannot directly destroy patients' unneeded opioid medications in the home. Part of the broader movement to address opioid misuse across populations, the change in the new law is an attempt to prevent drug diversion, keeping powerful medications intended for pain and symptom management for seriously ill patients out of the hands of those they were not prescribed to.

While most hospices already have written protocols spelling out the guidance they offer caregivers around drug disposal, allowing qualified staff to carry out this task directly may ease the burden and anxiety experienced by surviving family members who have historically been responsible for safely destroying medications. The law also requires that hospice programs document in the patient's clinical record the type of controlled substance, dosage, route of administration, and quantity, as well as the time, date, and manner in which the disposal occurred. The law does not, however, propose specific guidance around situations in which a patient or family member refuses to allow a hospice worker to take possession of the unused drugs for purposes of destroying them. Under federal law, medications are considered property of the patient or whoever inherits that person's property after they die. It will be important to track implementation of this change to ensure that adequate solutions are developed that strike a balance between respecting patient and family property rights and the public health goals this provision aims to achieve.

The second hospice provision ([Section 3223](#)) requires the Government Accountability Office (GAO) to conduct a study on the policies and procedures that hospices maintain for the management and disposal of controlled substances in a patient's home. To be submitted to Congress no later than 18 months after the enactment of the law, the study is required to provide an overview of any onsite drug disposal challenges hospices encounter under the new flexibility, as well as a description of Federal requirements hospice programs are subject to regarding drug disposal in home settings. The report will include the results of the study together with any legislative and/or administrative recommendations for improving the process of safe home-based drug maintenance and disposal.

¹Many states have passed their own opioid laws, including hospice drug disposal laws which are not addressed in this brief..

The law also explicitly exempts hospice from a number of provisions, including those related to Medicaid drug review and utilization requirements, mandatory e-prescribing for certain drugs, and data collection related to identifying outlier prescribers of opioids.

Looking Ahead

Hospices, especially NPHI members, are already playing an important role in addressing opioid misuse by offering bereavement and grief counseling services to the families and surviving caregivers of those that die from opioid overdoses. While required by the federal Conditions of Participation (CoPs), bereavement services are not reimbursable, and consequently, their scope and breadth varies greatly across different kinds of hospices.

Despite the payment hurdles, many non-profit, community-based providers are committed to bolstering their bereavement programs as the opioid epidemic continues to claim more and more lives, leaving behind a large number of family members and friends that are in need of the compassionate support and counseling that hospice can provide in the wake of a loved one's death. This new bill is a clear reflection of both Congress and the Administration's prioritization of policies that can address opioid misuse, and there may be more opportunities to highlight the critical role hospice and palliative care providers can play in ameliorating these challenges, and the need to provide adequate financial support to ensure they are able to continue doing so.

Additionally, NPHI has advocated that well-intentioned opioid policies not inadvertently restrict or limit access to necessary medications for the seriously ill or others who need access to these medications --- including Congressional advocacy to pressure the DEA to lift its cap on the production of IV opioids that are critical to the practice of good hospice and palliative medicine. The new bill contains numerous provisions intended to mitigate opioid over-prescription and inappropriate administration. Changes to FDA procedures, state-based drug monitoring programs, data collection efforts across agencies, and more are all representative of a broader effort to tighten oversight of drug development, distribution and use. While supportive of the spirit behind policies to reduce drug diversion and misuse, NPHI believes that opioids are necessary and appropriate for certain individuals receiving hospice and palliative care services, and will monitor the new law's implementation to track unintended consequences that may exacerbate drug shortages or access problems that negatively impact patients and their families. Opioids are an important component of alleviating patient pain and suffering, and hospice and palliative care providers can serve as a critical link in the care continuum for people facing intense pain and symptoms.