State Policies Regulating the Practice of Pain Management

Statutes, Rules, and Guidelines That Shape Pain Care

Robert K. Twillman, PhD[a,*], Aaron M. Gilson, MS, MSSW, PhD[b], Kathryn N. Duensing, JD[a,1]

KEYWORDS

• Pain policy • Dosage thresholds • Clinical practice guidelines
• Rules and regulations • Pain management

KEY POINTS

- Statutes, rules/regulations, and guidelines guiding pain management practice are found in nearly every state and profoundly affect pain care.
- Although there is some uniformity across these policies, unique features can be found in nearly all categories of included provisions.
- These policies are intended to help minimize opioid misuse, abuse, addiction, diversion, and related overdoses but have not yet been proved to work.
- Future efforts to develop pain management policy should seek to maximize intended consequences while minimizing negative unintended consequences for people with pain.

INTRODUCTION

Over the past 2 decades, pain management in the United States has increasingly come to rely on opioid analgesics as a primary treatment. As a result, there has been a sharp increase in opioid prescribing, with opioid analgesic prescriptions, by weight, quadrupling since 1999.[1] Concomitantly, there has been a dramatic increase in overdose deaths involving prescription opioids, with those rates also nearly

Disclosure Statement: Dr R.K. Twillman is a consultant and speaker for Indivior. Dr A.M. Gilson and Ms K.N. Duensing have nothing to disclose.

[a] American Academy of Pain Management, 975 Morning Star Drive, Suite A, Sonora, CA 95370, USA; [b] Pain & Policy Studies Group, Carbone Cancer Center, University of Wisconsin, 1300 University Avenue, MSC 6152, Madison, WI 53706, USA
[1] Present Address: 57 Auburn Avenue Southeast, Grand Rapids, MI 49506.
* Corresponding author. 975 Morning Star Drive, Suite A, Sonora, CA 95370.
E-mail address: btwillman@aapainmanage.org

Anesthesiology Clin 34 (2016) 409–424
http://dx.doi.org/10.1016/j.anclin.2016.01.010 **anesthesiology.theclinics.com**
1932-2275/16/$ – see front matter

quadrupling between 1999 and 2008.[2] Although virtually nothing more is known about the circumstances of these overdoses, numerous agencies led by the US Centers for Disease Control and Prevention have called for states to establish more stringent policies with respect to opioid prescribing.[3] The inherent message is: Decreased prescribing is a principal way to achieve fewer overdose deaths.

Influence of Authoritative Model Policy Templates

Before federal agencies began encouraging states to act in this manner, some states responded to concerns about the use of opioids to treat chronic pain by establishing guidelines for clinicians.

Over the past 2 decades, the Federation of State Medical Boards (FSMB) developed policy templates that contributed to and informed most of the regulatory policy adoption to help guide physicians prescribing for pain management. Beginning with model guidelines issued in 1998,[4] the FSMB attempted to provide physicians with several recommendations considered necessary for safe and appropriate pain care (**Table 1**). These treatment guidelines contain a preamble establishing a context for prescribing, acknowledging pain management as an accepted part of medical practice, and supporting the clinical use of controlled substances, including opioid analgesics, when deemed warranted. The policy further addressed concerns about regulatory scrutiny by assuring physicians that they would not be sanctioned solely for prescribing controlled substances for legitimate medical purposes. The policy template also urged physicians to continually evaluate benefits and risks of treatment and to adopt methods to minimize and, when possible, identify and address diversion-related or abuse-related activities. A multidisciplinary panel of experts composed of representatives from the areas of health care, regulation, law, and policy research, helped draft the model guideline document, which ultimately was formally endorsed by several federal and national organizations. Such organizations included the American Academy of Pain Medicine, the American Medical Association, the American Pain Society, the American Society of Law, Medicine & Ethics, the US Drug Enforcement Administration, the National Association of State Controlled Substances Authorities, and the US Public Health Service, Office of Substance Abuse Treatment.

By 2004, state medical boards were calling for the FSMB to revise the template to ensure that it maintained conformity to current medical opinion and brought additional attention to the undertreatment of pain. As a result, the FSMB updated the model guidelines (now called a *model policy*) to further elaborate boards' expectations related to pain treatment and to clearly define inappropriate practice to include "non-treatment, under-treatment, over-treatment, and continued use of ineffective treatments."[5] The 7 treatment guidelines remained the same, and the description of each was substantively consistent with the previous version, which reinforced the intent to preserve the purpose of the policy template: to improve the quality and consistency of states' health care regulatory board policies. Furthermore, there was a more explicit attempt to convey that the proffered recommendations were not meant to limit or dictate clinical decision making, which was left to a practitioner's discretion (clinical judgment), skills, and expertise. Overall, the 2004 policy reiterated the professional responsibility to assess and treat patients' pain while safeguarding against medication abuse or diversion. Again, the composition of the advisory committee drafting the policy represented similar constituencies as before but was expanded to include law enforcement and patients.

It was not until 2013 that the next revision[6] was issued, taking into account the empirical evidence that had accumulated in the past decade. As such, content from