PRESCRIPTION DRUG MONITORING PROGRAMS: What You Need to Know

Introduction

A Prescription Drug Monitoring Program (PMP) is a state-run electronic database that stores and analyzes information on the prescribing and dispensing of specific controlled substances.[i] The general purpose of a PMP is two-fold: 1) to reduce misuse and diversion of controlled substances and 2) to improve patient safety.[ii]

These programs, found in the majority of states, specify the following:

- the scheduled substances to be monitored, typically Schedule II, III, and IV drugs (drugs of concern or nonscheduled drugs may also be included), and
- those who are authorized to access and use PMP data (authorized users typically include prescribers and dispensers; law enforcement agencies; representatives of professional or occupational boards, directors of state commissions or agencies; and individuals whose prescription history has been captured by the database).

Legal and Clinical Implications

What are the legal and clinical ramifications of PMPs for physicians prescribing controlled substances? Legally, physicians must know what state law requires of them, in particular, whether physicians are required to access the data. New York became the first state to create a duty for practitioners to review PMP data prior to prescribing Schedule II, III, and IV controlled substances.[iii] Some states, such as Kentucky,[iv] set forth certain circumstances under which a prescriber must check the database, while most states currently allow the practitioner to determine when the data is needed. However, more states may begin to require PMP review following New York's lead. Even if review of PMP data is not required by law, the fact that the capability to do so exists may impact the standard of care.

Physicians should also know that their prescription histories will be tracked, as over-prescribers are targets of increased scrutiny. Two other legal issues to be aware of are that some states permit physicians to delegate authority to access PMP data to another person under their direct supervision and, at the present time, PMP laws do not require physicians to notify law enforcement of suspicious behavior on the part of the patient.

Clinically, a patient's prescription history may be valuable information to have when prescribing. For example, a new patient wants a prescription for stimulants. Upon reviewing the PMP data, you note that the patient just filled such a prescription three days prior to her first visit with you. Given this information, you decide not to prescribe at that visit and to clinically address the

issue with the patient. States are beginning to share PMP data which should prove clinically useful to psychiatrists who have patients that cross state lines to obtain prescriptions. States are also striving to move to real-time reporting so that practitioners can get the most current information on their patients.

Risk Management Advice

Legal and Professional Obligations: Familiarize yourself with the PMP in your state and its requirements, if any, for prescribers. Licensing boards and professional organizations are good resources for this information. The Alliance of States with Prescription Monitoring Programs (http://pmpalliance.org/) is also a good resource for general information.

Inform your patients: Some states, such as Virginia, require that prescribers provide notice to their patients that they will access PMP data.[v] You may want to do this even if not required to by the state as part of educating and informing your patients. Remember, however, that you do not need patient authorization to access the PMP. Moreover, you should not seek patient authorization to access the PMP as doing so may lead patients to believe they can prevent you from reviewing it when they cannot.

Proper Prescribing and Monitoring of Medications: Consider whether applying for access to and using the data might assist you in making decisions on prescribing controlled substances. Incorporating review of the data into your practice may be particularly useful when seeing new patients who request prescriptions for controlled substances. Having the data may also make it easier to initiate a conversation with your patients on proper use of controlled substances, the risks of abuse and diversion, and the availability of substance abuse programs. We know that allegations of improper prescribing and monitoring of medications form the basis for a significant majority of lawsuits filed against our insured psychiatrists. Use of PMP data may minimize the risks of those allegations being made against you with regard to controlled substances and may indicate when a treatment relationship needs to be terminated.

Documentation: We suggest reviewing your practice state's PMP laws and regulations, as well as those relevant to prescribing controlled substances, for any documentation requirements. For example, in New York, the law only requires noting that a review of the PMP registry was done or that it was not done along with the applicable exception. Not only does this approach align with the law, it respects the highly confidential nature of the information and the potential legal consequences attached to it. So our general advice is for your documentation to reflect that the PMP data was reviewed. Due to the highly protected nature of PMP data and the stiff penalties for improper disclosure, unless required by state law, we advise against including a copy of the PMP report in the medical record. If the PMP reports are printed for review, a policy and procedure for secure shredding of the documents after review should be in place and followed.

Conclusion

As PMP laws and regulations continue to evolve, our risk management advice will as well. In states where physicians are required to access and use PMP data, the standard of care will also require that they do. In states without such a mandate, the

issue is not as clear. Understanding the general purpose of PMPs and your state's specific requirements, will ensure that you are in compliance with the applicable legal and professional standards. Incorporating the review of PMP data into your practice may serve to inform prescribing practices, enhance patient safety, and minimize your professional liability risk.

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[i] US Dept. Justice Office of Diversion Control, State Prescription Drug Monitoring Programs. Accessed online at www.deadiversion.usdoj.gov/faq/rx_monitor.htm#1.
[ii] Id.
[iii] N.Y. Pub. Health Law § 3343-a(2)(2013).
[iv] KASPER (Kentucky All Schedule Prescription Electronic Reporting. Accessed online at http://www.chfs.ky.gov/os/oig/KASPER.htm.
[v] 18 Va. Admin. Code 76-20-70 (2014).

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