Bitter Pill to Swallow: The Painful Liability Exposures Presented by Opioids
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The U.S. consumes more than 90% of the 259 million prescriptions written for opioids worldwide. More than 10% of adolescents age 12-18 will use prescription opioids for non-medical use this month. In 2013, there were 42,982 overdose deaths.
By the Numbers

**PRESCRIPTIONS**
One out of every three (32%) opioid prescriptions is being abused.

**MEDICAL SPENDING**
Opioid abusers cost employers nearly 2 times as much in health care expenses on average than non-abusers.

**BEHAVIORAL HEALTH**
Patients with a behavioral health diagnosis of any kind are 3 times more likely to abuse opioids than those without one.

**PAIN**
Opioid abusers have 2 times as many pain-related conditions as non-abusers. The top conditions for Opioid misuse are: neck, back, abdominal, and joint.

**ECONOMIC COST**
The cost of opioid misuse to the U.S. economy is $56 billion.

Source: American Society of Addiction Medicine; CDC; Castlight Health analysis of de-identified medical and prescription claims from 2011 to 2015 across demographic categories and 2015 annual medical health care spending.
How Did We Get Here?

1980s – 1990s:

Shift in Treatment
• Little Provider Training
• Lack of Oversight

Risk of Addiction
• Underestimated
• Overlooked

Money
• Pharmaceutical Companies
• Black Market
Vulnerabilities in Medical Professional Liability

Prescribing and Dispensing Practices
- Rules for prescribing practices changed overnight
  • California MBC Guidelines: 7 pages to 87 pages

Oversight Responsibilities of Healthcare Organizations
- Governing Body credentialing/privileging
- Respondeat superior, vicarious liability

Civil Liability  Criminal Liability
Vulnerabilities in Medical Professional Liability

Civil Liability Resulting in Millions

• $1.5 million for under treatment of pain
• $4.1 million - Pharmacy held liable for man who overdosed on stolen drugs while at a party
• $17.6 million ($15 million punitive damages) against St. Louis physician and hospital

Criminal Liability Resulting in Jail Time

• Second degree murder
• Money-laundering
• Prescribing without good faith examinations
• Selling prescriptions
• Diverting pills
Vulnerabilities in Medical Professional Liability

How do Healthcare Professional Liability Policies Respond?

- Individual physician policies vs. Healthcare organizational policies
- Criminal liability
  - Excluded from coverage?
  - Defense expenses provided until final adjudication?
Strategies and Best Practices to Mitigate Exposure

Risk Management Strategies for **Prescribers**

- **Education / Training**
  - Follow guidelines, standards, PDMPs, CURES
  - Training courses on safe prescribing, difficult conversations
  - Document!

- **Distribution / Dispensing**
  - Informed consent - Manage dosing, refills, number of pills
  - Naloxone distribution - Limit pharmacies used
  - No dispensing (?)

- **Patient Analysis**
  - Set expectations; pain management contracts
  - Follow up visits - Drug testing
  - “Red flags”
Strategies and Best Practices to Mitigate Exposure

Risk Management Strategies for **Oversight of Prescribers**

• **Monitoring**
  – Physician supervision of midlevel providers, resident prescribing
  – State prescription drug monitoring programs
  – InterConnect
  – Audits (records / practices; prescribing pads)

• **Standards**
  – CMS CoPs
  – JC Proposed Pain Management Standards for 2017

• **Agencies**
  – Professional Licensing Boards
  – Dept. of Public Health / Regulatory Agencies
  – DEA
Strategies and Best Practices to Mitigate Exposure

Risk Management Strategies for **Dispensing Medication**

**Use Caution!**

- **Comply with DEA Requirements**
  - Ordering, inventory controls, documentation, maintenance

- **Control Access**
  - Communicate with prescribers
  - Support “take-back” (disposal) programs

- **Know your patients**
  - Online databases for medication history
  - Patient counseling / “Duty to Warn”
  - Red Flags
The Impact on Professional Liability Insurance

- **Targets**: Everyone is a target
- **Lawsuits**: Expect frequency to increase
- **Damages**: Sympathy for the patient, evolving damage theories
The Impact on Professional Liability Insurance

How do we underwrite to this risk?

☑ Understand your current and future insureds potential exposures for opioid related losses.

☑ Know what settings and specialties are most affected.

☑ Understand the basics of opioid prescribing practices.

☑ Understand the differences between opioid treatment and addiction treatment.

☑ Ask if there are any claims related to opioid prescribing/pain mgt.

☑ Ask if pain management contracts are in use.
How do we underwrite to this risk?

- Do they follow CDC guidelines for Opioid Prescribing?
- How strict is their state prescribing model?
- Are there state mandated Opioid/Pain Management CMEs?
- Do practitioners have any pain related credentials/certifications?
- Have the insured’s ever been under DEA review or had restrictions put into place for pain management/narcotic control?
Potential discussions during underwriting process.

- Proactively address the strategies already in place to mitigate risk
- Do they have success stories to share?
- Have them explain where they are in becoming compliant with applicable laws, regs and mandates (external and internal)
- If they have had a legal claim, patient complaints, physicians sanctions, DEA actions, etc. (related to opioids) how are they handled?
Potential discussions during underwriting process.

• Are inappropriate prescribing concerns discussed as part of credentialing/privileging/re-credentialing practices?
• Are they aware of available training/education in place…required or optional?
• Is there a Naloxone kit program?
• Is nursing involved? Is Pharmacy? Others?
• What is community involvement? State involvement?
How can the Health Care PL industry help clients?

- Become conversational concerning the depth and scope of the opioid epidemic
- Identify and understand potential loss exposures (including other LOCs)
- Evaluate current insurance contract language in response to potential claims
- Increase awareness of how the epidemic is being managed in your client’s venue(s)
- Confirm your consultants can respond to inquiries for assistance or resources
- Consider publishing or sponsoring a speaker on the topic
- Share successful practices & resources you have seen elsewhere
The National Safety Council Findings

1. Requires Mandatory Prescriber Education
   - **17 states** meet this indicator: CA, CT, DE, IA, KY, MA, NV, NM, NC, OR, RI, SC, TN, VT, WI, WV

2. Adopted Opioid Prescribing Guidelines
   - **22 states** meet this indicator: AL, AZ, AR, CA, CO, HI, IN, KY, MA, MN, NH, NM, NC, OH, OK, PA, RI, TN, UT, VT, WA, WV

3. Eliminating Pill Mills
   - **12 states** meet this indicator: AL, FL, GA, IN, KY, LA, MS, OH, TN, TX, WI, WV

4. Allows Physician and Pharmacy delegates to PDMPs
   - **42 states** meet this indicator: AL, AR, AZ, CA, CO, CT, DE, DC, ID, IL, IN, IA, KS, KY, LA, MD, MA, ME, MN, MT, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI

5. Allows Naloxone to be prescribed with a standing order
   - **35 states** meet this indicator: AK, AL, AR, CA, CO, DE, FL, GA, IL, IN, KY, LA, MD, ME, MN, MS, NC, ND, NV, NJ, NM, NY, OH, OK, PA, RI, SD, TN, TX, UT, VA, VT, WA, WI

6. Availability of Opioid Use Disorder (OUD) Treatment
   - **3 states** meet this indicator: ME, NM, VT

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Want to learn more?

**Centers for Disease Control and Prevention (CDC) 2017**
- Injury Prevention & Control: Opioid Overdose
- Guideline Resources Including Toolbox
- CDC Guideline for Prescribing Opioids for Chronic Pain
  https://www.cdc.gov/drugoverdose/prescribing/guideline.html

**The National Safety Council 2016**
- Prescription Nation 2016: Addressing America’s Drug Epidemic

**National Institute on Drug Abuse**
- Opioid Prescribing Resources, 2014
  https://www.drugabuse.gov/nidamed-medical-health-professionals/tool-resources-your-practice/opioid-prescribing-resources

**American Society of Addiction Medicine**
- Opioid Prescribing Resources
  http://www.asam.org/education/resources/Opioid-Prescribing/resources

**American Medical Association**
- Reducing Opioid Abuse & Misuse

**Substance Abuse and Mental Health Services Administration, 2016**
  https://www.samhsa.gov/atod/opioids
Questions