MN Legislative Update 2022

Charles Reznikoff MD

Hennepin Healthcare

Charles.reznikoff@hcmed.org

Overview of MN politics

- 2022 a challenging year for MN politics
- Bipartisan control of government
- Governor, house and senate all being decided
- Many retirements, including senator champions for SUD legislation (Eaton-D, Rosen-R). Redistricting
- Previously bipartisan bicameral legislators who implemented evidence-based SUD policy
- This election will determine control of government and possibly tenor of politics going forward
- Reps Dave Baker-R and Liz Olson-D both friendly to SUD legislation are rising stars

Addiction Policy Reflections

- We each have personal politics outside of our medical specialty
- Politics are increasingly "tribal" meaning all-or-none allegiance to our chosen political party
- Evidence-based best practices in addiction medicine does not break down along traditional party lines
- It is important to view SUD policy through medical lens and not a political lens–

  Work with and talk to both parties!

Overview of Updates

- THC edibles are now legal in MN
- Intractable pain is redefined; patients with intractable pain and their clinicians are protected
- Americans with disabilities act protects people with opioid use disorder (on medications)
- Opioid settlement funds go to local communities
- Interagency subcabinet on substance use disorder
- Grab bag: syringe program, rule 25, loan forgiveness

THC edibles:

"From worst to first"

THC edibles “from worst to first”

- Rule of thumb: if it is from hemp, it is legal
- Hemp is <0.3% THC
- There is A LOT of hemp used in CBD production etc
- This is where delta 8/10 came from
- Technology for THC extraction is better
- Once extracted, the THC from hemp is medically the same as the THC from cannabis

THC edibles “from worst to first”

- THC is from hemp can be used, processed, sold by anyone as if it is any other hemp product (*e.g.* CBD)

  Part of meals, baked goods, drinks at a coffee shop, “seltzer” at taphouses, in co-ops, etc etc.

- Regulations on THC:
  - Edibles only
  - 5 mg per serving
  - 50 mg per package
  - Derived from hemp
  - Must be 21 years or older to purchase

www.revisor.mn.gov/bills/bill.php?b=House&f=HF4065&y=2022&ssn=0

Dosing thoughts

- 5 MG is a very common starting dose for THC for a cannabis naïve person
  - Most people will tolerate this dose
- By 20 mg of THC 66% of cannabis naïve individuals will have adverse effects
- A tolerant user of cannabis can ingest >100 mg cannabis in one edible
- This is a fairly safe dosing restriction

THC edibles “from worst to first”

- Very interesting politics behind this law
  - Republicans claimed not to know
  - Democrats point out that the language went through normal channels
  - Clear benefit to Dems, uncertain benefits to Reps
- Challenging to fully roll back at this point
- Expect taxes and more regulations in 2023, especially if republicans gain control
  - Tax money to fund SUD treatment?

mprnews.org/episode/2022/07/06/clearing-up-confusion-about-minnesotas-newest-legalized-thc-edible

Remember:
Recreational cannabis is still illegal in our state

Questions or comments on THC law?

Intractable pain bill

- “Intractable pain” is a term that applies to people with chronic pain, but has a specific legal definition and legal protections written into law
  - “Legal” diagnosis
  - Existing law was very narrow up till now
- More and more people on opioids for pain are pushing for protections against mistreatment and forced tapers
- In response to the opioid prescribing reports, pressure increased to change the intractable pain law to protect more people

www.revisor.mn.gov/bills/text.php?number=HF4065&type=bill&version=3&session=ls92&session_year=2022&session_number=0 72.24

Redefining intractable pain

- Examples of intractable pain provided
  - Sickle, cancer or noncancer, palliative, “orphan” diseases
- You need to be a pain specialist or trained in the specific cause of the pain to call it intractable
- Once it is called intractable, the diagnoses causing it be intractable cannot preclude opioid Rx
- Intractable pain patients have a specific legally required patient provider agreement

How people with intractable pain are protected

- Pharmacist, health plan, and PBM cannot deny a refill ***SOLELY*** based on MME
- Clinicians not subject to board of medicine/nursing discipline for "appropriately prescribing" opioids for intractable pain
- No Medicaid disenrollment of clinicians ***SOLELY*** for prescribing MME dose when treating intractable pain
- Patients w/intractable should not have opioids tapered ***SOLELY*** to meet MME targets or thresholds

  "If the patient is stable and compliant with the treatment plan, is experiencing no serious harm from the level of medication currently being prescribed or previously prescribed, and is in compliance with the patient-provider agreement as described in subdivision 5"

Patient provider agreement (PPA)

- Must describe expectations responsibilities and rights according to best practices
- Signed and a copy given to the patient
- Reviewed annually
- Nonadherence with the PPA cannot be the only reason to taper or discontinue
  - Instead, evaluate for SUDs
  - Diversion is the one exception that allows for a taper
- Emergencies exempt from requiring PPAs

What the intractable law does

- Addresses concerns of harms to Minnesotans from overly strict regulations and hasty tapers
- This law creates a protected group of patients whose treatment with opioids should not be affected by MME considerations alone
- My take:
  - We shouldn’t rely solely on MME anyway
  - This will apply fairly narrowly
  - All the rules of professionalism and EBM still apply
  - We can carry on delivering thoughtful care
- The hidden headline: ***constrains PBMs on dose limits***

Questions or comments on intractable pain law?

Is Substance Use Disorder a protected disability?

Is Substance Use Disorder a protected disability?

Answer: yes

If they are not actively using substances illegally

www.ada.gov/opioid_guidance.pdf

OUD and ADA from DOJ

- "People with OUD typically have a disability because they have a drug addiction that substantially limits one or more of their major life activities"
- People cannot be discriminated against because they have OUD
  - Or associate with people with OUD
  - Or are regarded to have OUD
- They also cannot be discriminated against because they take medications for OUD
- People ***currently*** illegally using drugs are not protected

Examples OUD and ADA from DOJ

- A skilled nursing facility refuses to admit a patient with OUD because the patient takes doctor-prescribed MOUD, and the facility prohibits any of its patients from taking MOUD. The facility's exclusion of patients based on their OUD would violate the ADA
- A jail does not allow incoming inmates to continue taking MOUD prescribed before their detention. The jail's blanket policy prohibiting the use of MOUD would violate the ADA
- A doctor's office has a blanket policy of denying care to patients receiving treatment for OUD. The office would violate the ADA if it excludes individuals based on their OUD.

Examples OUD and ADA from DOJ

- A mentoring program requires its volunteers to provide test results showing that they do not engage in the illegal use of drugs. The program dismisses a volunteer who tests positive for opioids for which the volunteer does not have a valid prescription. This does not violate the ADA because the dismissal was based on current illegal drug use
- A hospital emergency room routinely turns away people experiencing drug overdoses, but admits all other patients who are experiencing emergency health issues. The hospital would be in violation of the ADA for denying health services to those individuals because of their current illegal drug use, since those individuals would otherwise be entitled to emergency services.
- A drug rehabilitation program asks a participant to leave because that participant routinely breaks a rule prohibiting the use of illegal drugs while in the program. This is not discrimination under the ADA because the program can require participants to abstain from illegal drugs while in the program.

Examples OUD and ADA from DOJ

- A city terminates an employee based on his disclosure that he completed treatment for a previous addiction to prescription opioids. The city may be in violation of the ADA for discriminating against the employee based on his record of OUD
- An employer mistakenly believes that an employee has OUD simply because that employee uses opioids legally prescribed by her physician to treat pain associated with an injury. The ADA prohibits an employer from firing the employee based on this mistaken belief
- A town refuses to allow a treatment center for people with OUD to open after residents complained that they did not want "those kind of people" in their area. The town may violate the ADA if its refusal is because of the residents' hostility towards people with OUD

Bottom line for disability protections

- Patients with opioid use disorder are protected from discrimination based on their diagnosis if they are not actively using substances illegally
- Clinicians and systems are not compelled to initiate MOUD, but discontinuing it or refusing care based on MOUD is illegal
- This will affect many of our patients regarding work, jail or housing
- There is a process for reporting instances where these recommendations are not followed
  - File report at: civilrights.justice.gov

Questions or comments on DOJ interpretation of ADA?

Opioid Funds disbursement

- There was a previous process for awarding grants based on funds from opioid licensing fees
  - Opioid epidemic response advisory council (OERAC)
- There is now new money ($340M over 18 years) coming from settlement of litigation between the state and multiple defendants involving in opioids
  - 25% of the money supports current OERAC activity awarding grants
  - 75% disbursed to counties

Statewide opioid settlement agreement

- Releases defendants from current and future opioid litigation from municipalities within the state
- Opioid epidemic response advisory council shall consult with municipalities and tribes re: grants
- Municipalities and tribes receiving direct payments from a statewide opioid settlement agreement must report annually to the commissioner of human services on how the payments were used on opioid remediation
  - www.revisor.mn.gov/bills/text.php?number=SF4025&version=latest&session=ls92&session_year=2022&session_number=0

Questions or comments on opioid funds disbursement?

Interagency subcabinet on substance use epidemic formed

- **Opioids, substance use, and addiction subcabinet**
- Subcabinet is formed to better coordinate efforts across multiple state agencies combatting substance abuse epidemics
  - Opioids alcohol and other drugs
  - 1/10 people accessing treatment
  - Important disparities in treatment and outcome
- Members include DHS, MDH, Education, Higher Ed, Public Safety, Corrections, Management and Budget, Council on Homelessness

Interagency subcabinet on substance use epidemic formed

- An advisory council to the subcabinet will form. Fifteen members – variety of stakeholders
  - Applications already submitted for these spots
- The Governor's Advisory Council on Opioids, Substance Use, and Addiction will advise the subcabinet
  - "Identify challenges, identify opportunities, identify barriers to marginalized peoples, address addiction as a chronic disease, address underlying causes and improve public awareness, recommend legislation"
    - kstp.com/wp-content/uploads/2022/04/EO-22-07.pdf

Questions or comments on the subcabinet?

Brief updates

Rule 25 changes

- Rule 25s no longer happening in MN!
- Patients now call treatment centers directly and set up intake directly
- At treatment intake the center does the intake assessment (within 3 days of intake)
- The treatment center directly interacts with state for funding/payment
- This change creates more direct and easy access of treatment (good thing) but also a chance the patient doesn’t qualify and gets denied (bad thing)

Syringe program language clarification

- In 2022 language was proposed to explicitly make legal the work of syringe programs
- Because of politics unrelated to the bill, the bill did not pass
- Expect this to be revisited in 2023

www.revisor.mn.gov/statutes/cite/151.40

Sober home regulation

- This summer a series of committees convened to gather input on proper standards and regulations for sober homes
- After one more meeting recommendations will be released

www.revisor.mn.gov/bills/text.php?number=HF2493&version=latest&session_number=0&session_year=2007

Work force expansion

- Tuition loan forgiveness expanded to include those who pursue an LADC degree

- MN Health Care Loan Forgiveness Programs - Minnesota Dept. of Health (state.mn.us)

Questions or comments on anything we discussed?

Discussion:
What laws would you like to see changed passed/signed in 2023?

Summary

- There is a lot of uncertainty in the future of Minnesota politics
- Historically there is a bipartisan group that addressed SUD issues
- Even in a year where not much happened, a number of changes to laws affecting substance use disorders