



Hospice and the Opioid Crisis: Pending Senate Legislation Would Allow Certain Hospice Employees to Assist with Controlled Substance Disposal

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The U.S. Senate is continuing to ramp up efforts to address the opioid abuse crisis. As a part of that effort, on April 16, 2018, the Senate introduced S. 2680, the *Opioid Crisis Response Act of 2018*.¹ The Bill is currently in the Senate Health, Education, Labor, and Pensions Committee. If enacted, the legislation could mark a shift in the way hospice providers are allowed to handle drug disposal after a patient death.

Current federal drug disposal law lacks the clarity necessary for effectiveness; it prohibits hospice personnel from handling the drugs unless expressly permitted by the applicable state law (see 42 C.F.R. § 418.106 and 21 C.F.R. § 1317.30). Unfortunately, this leads to hospices having a lower legal risk if they do not assist with the disposal of drugs following the death of a patient. If passed into law, the Bill (at Section 306) will bring greater certainty to the law by modifying the Controlled Substance Act at 21 U.S.C. § 822(g) to add a new subsection 5, but will also require hospices to develop new policies, training, and documentation requirements. The Bill will include the following provisions:

- “Employees” of “qualified hospice programs” will be permitted to handle, “in the place of residence of a hospice patient,” any controlled substance that was lawfully dispensed to the patient, “for the purposes of assisting in the disposal of the controlled substance after the hospice patient’s death.”
- “Employee” is defined to include physicians, physician assistants, and nurses who are (1) employed by, or acting pursuant to arrangements made with, a qualified hospice program and (2) licensed or certified to perform such employment or acts in accordance with applicable state law.
- “Qualified hospice program” is defined to mean a program that:
 - has written policies and procedures to guide employees of the hospice program in the disposal of the controlled substances of a hospice patient after the hospice patient’s death;
 - at the time when the controlled substances are first ordered—
 - provides a copy of such written policies and procedures to the hospice patient or hospice patient representative and the family of the hospice patient;
 - discusses the policies and procedures with the hospice patient or hospice patient’s representative and the hospice patient’s family in a language and manner that such individuals understand, to ensure that such individuals are informed regarding the safe disposal of controlled substances; and
 - documents in the clinical record of the hospice patient that the written poli-

¹ For the full text of the Bill, see <https://www.congress.gov/bill/115th-congress/senate-bill/2680/text?q=%7B%22search%22%3A%5B%22s2680%22%5D%7D&r=1>.

cies and procedures were provided and discussed with the hospice patient or hospice patient's representative; and

- at the time when an employee of the hospice program assists in the disposal of controlled substances of a hospice patient, documents in the clinical record of the hospice patient include a list of all controlled substances disposed of.
- Express affirmation that no DEA registration would be required for the hospice programs undertaking these activities.

Section 307 of the Bill also requires the Government Accountability Office (GAO) to conduct a study on “the requirements applicable to and challenges of hospice programs with regard to the management and disposal of controlled substances in the home of an individual.” The GAO will be required to produce a report within eighteen months after the enactment of Section 307.

A Committee markup on April 24, 2018 also proposed the following:

- Expanding disposal authority to expired medications;
- Adding nurse practitioners to the list of “Employees” eligible to dispose of opioids in the event of death; and
- Authorizing physicians to dispose of opioids in the home if a patient’s plan of care changes.

Hospice providers should monitor the legislation as it moves through Congress and the impact it could have on day-to-day operations, as well as the role they would play in combatting the opioid crisis. If the legislation is enacted, the changes will trigger, at a minimum, the need to review and update written policies and staff training. Hospice providers should also track any state-level drug disposal changes, which continue to evolve in response to the opioid crisis.

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