

MLMIC Risk Management Tips

Tip #10: Managing Chronic Pain Patients

The Risk: The management of chronic pain, through the prescription of medication, poses challenges and risks to both the patient and the healthcare provider (physician, physician assistant, or nurse practitioner). These risks include the potential for patient addiction, diversion, the possibility of overdose, and death, whether accidental or the result of suicide. The provider's fear of the following risks may lead to inadequate treatment of the patient:

- **liability for failure to adequately treat pain;**
- **liability for allegedly inappropriately prescribing controlled substances;**
- **potential for civil charges being brought against a physician or other provider for the patient's diversion of narcotics and/or drug abuse or overdose; and**
- **liability for failing to recognize a patient's addiction and/or diversion and to refer the patient for treatment**

Recommendations:

1. Perform and document a thorough initial evaluation of the patient. This should include: a history and assessment of the impact of the pain on the patient; the nature, type and causation of the pain; and, a focused physical examination to determine if there are objective signs and symptoms of pain. The provider must also review pertinent diagnostic studies and previous interventions, a drug history, and assess the extent of co-existing medical conditions which impact the patient's pain. It is important to obtain the names of all other providers the patient is seeing or has seen, and the pharmacies the patient uses.
2. Develop a specific treatment plan based upon the evaluation.
3. Maintain accurate, legible, and complete medical records which clearly support the rationale for the proposed treatment plan.
4. Perform a thorough informed consent discussion regarding the plan of care, including the risks, benefits, and alternatives, and the risks of the alternatives, including no treatment with controlled substances.

5. Request the patient's consent to obtain copies of the records of all prior treating physicians, and review these records before prescribing narcotics, to determine if there is a history of drug seeking behavior or abuse.
6. Use a written pain management agreement when prescribing controlled substances for patients with chronic pain. If the patient has a prior history of drug abuse, refer the patient to a pain management practice or clinic, if possible. A pain management agreement outlines the expectations of the provider and the responsibilities of the patient including:
 - baseline screening of urine/serum medication levels
 - periodic unannounced urine/serum toxicology screening
 - medications to be used, including dosage(s) and frequency of refills
 - a requirement that the patient receive medications from only one physician and use only one pharmacy
 - frequency of office visits
 - reasons for discontinuance of drug therapy (e.g. violation of agreement)

A sample pain management agreement can be obtained by contacting Fager Amsler & Keller, LLP at (877) 426-9555

7. Document and monitor all prescriptions and prescription refills.
8. Protect prescription blanks. Limit and monitor staff access to computer-generated prescriptions.
9. Take positive action if you suspect patient addiction or diversion. Public Health Law § 3372 requires a physician to report to the New York State Bureau of Controlled Substances any patient who is reasonably believed to be a habitual user or abuser of controlled substances at (518) 402-0707.
10. Refer the patient for treatment of addiction if appropriate, and document this discussion with the patient in the medical record.
11. If a patient is believed to be selling/diverting narcotics, and the patient's random urine test confirms no drug use or there has been a forgery or theft of prescriptions, contact the law firm of Fager Amsler & Keller, LLP to discuss how to discharge the patient and how to handle requests for medications from the patient before the discharge is final.