

# IS THE END TO THE OPIOID EPIDEMIC NEAR? FLORIDA AND OTHER STATES ATTEMPT TO ADDRESS THE CRISIS BY PASSING NEW LIMITS ON OPIOID PRESCRIPTIONS

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## I. INTRODUCTION

The amount of opioids that are “prescribed in the [United States] each year [can] keep every man, woman, and child in the country medicated around the clock for one month.”<sup>1</sup> Consequently, “over [two] million Americans over the age of [eleven] struggled with an opioid . . . abuse disorder in 2014.”<sup>2</sup> Drug abuse and addiction have also cost Americans two hundred billion dollars in healthcare, the criminal justice system, lost workplace production, and child care in 2007.<sup>3</sup> The Department of Health and Human Services found that states were dealing with a greater amount of children in foster care.<sup>4</sup> The Centers for Disease Control and Prevention (“CDC”) also stated that there was an “increase in the number of babies born with Neonatal Abstinence Syndrome,” which “is a drug withdrawal syndrome that occurs” when mothers abuse opioids while pregnant.<sup>5</sup> Research also indicates that the increase in opioid prescriptions accounts for the 20% decline in the men’s labor force.<sup>6</sup>

Opioids cause a majority of the overdoses in the United States, with these deaths being five times higher in 2016 than in 1999.<sup>7</sup> Statistics show that “[r]oughly 21 to 29 [%] of patients prescribed opioids . . . misuse them.”<sup>8</sup> “[P]eople addicted to prescription drugs are [forty] times more likely to [become] addicted to heroin . . . .”<sup>9</sup> In 2017, over seventy-two

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1. Brennan Hoban, *The Far-Reaching Effects of the US Opioid Crisis*, BROOKINGS INSTITUTION (Oct. 25, 2017), <http://www.brookings.edu/blog/brookings-now/2017/10/25/the-far-reaching-effects-of-the-us-opioid-crisis/>.

2. *Statistics on Drug Addiction*, AM. ADDICTION CENTERS, <http://www.americanaddictioncenters.org/rehab-guide/addiction-statistics/> (last visited Dec. 17, 2018).

3. *Id.*; see also Hoban, *supra* note 1.

4. Hoban, *supra* note 1.

5. *Id.*

6. *Id.*

7. *Understanding the Epidemic*, CDC, <http://www.cdc.gov/drugoverdose/epidemic/index.html> (last updated Aug. 30, 2017).

8. *Opioid Overdose Crisis*, NAT’L INST. ON DRUG ABUSE: DRUGS OF ABUSE, <http://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last updated Mar. 2018).

9. *Statistics on Drug Addiction*, *supra* note 2.

thousand Americans died from a drug overdose.<sup>10</sup> Every day, almost one hundred fifteen people die from overdosing on opioids.<sup>11</sup> In Florida alone, sixteen people per day are lost to an opioid overdose.<sup>12</sup>

The abuse of prescription painkillers and heroin has become a national health crisis.<sup>13</sup> Federal agencies have attempted to solve what is now known as the *opioid epidemic*; however, drug overdose remains the leading cause of death for Americans under the age of fifty.<sup>14</sup> The CDC has drafted guidelines for prescribing opioids, and the United States Food and Drug Administration (“FDA”) has issued warning labels to accompany prescription painkillers.<sup>15</sup>

In March 2018, then-Governor Rick Scott signed House Bill 21 to combat the opioid epidemic.<sup>16</sup> The Governor’s goal in passing this legislation was to limit the occurrence of drug addiction, reduce the availability of opioids, and help those who are vulnerable or in need of assistance.<sup>17</sup>

Research has shown that many addicts received and consumed their first opioid following a medical procedure.<sup>18</sup> Therefore, this legislation provides for tougher limits on prescription painkillers and more money for treatment programs.<sup>19</sup> The bill reduces opioid prescriptions for acute pain patients.<sup>20</sup> For a patient suffering from chronic pain, the prescription must include specific indications regarding its need and use.<sup>21</sup> Doctors who do not

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10. *Overdose Death Rates*, NAT’L INST. ON DRUG ABUSE, <http://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates> (last updated Aug. 2018).

11. *See Understanding the Epidemic*, *supra* note 7.

12. *January 16-19, 2018*, THIS WEEK FLA. SENATE (Fla. Senate: Majority Off., Tallahassee, FL), Jan. 19, 2018, at 1, [http://www.flsenate.gov/PublishedContent/Offices/2016-2018/Majority/Documents/This\\_Week\\_in\\_the\\_Florida\\_Senate\\_-\\_January\\_16-19.pdf](http://www.flsenate.gov/PublishedContent/Offices/2016-2018/Majority/Documents/This_Week_in_the_Florida_Senate_-_January_16-19.pdf).

13. *See Sonia Moghe, Opioid History: From Wonder Drug to Abuse Epidemic*, CNN: HEALTH (Oct. 14, 2016, 6:41 AM), <http://www.cnn.com/2016/05/12/health/opioid-addiction-history>.

14. *Opioid Lawsuits*, CONSUMERSAFETY.ORG, <http://www.consumersafety.org/legal/opioid-lawsuits/> (last visited Dec. 17, 2018).

15. Moghe, *supra* note 13.

16. Act effective July 1, 2018, ch. 2018-13, § 21, 2018 Fla. Laws 1, 106 (codified in scattered sections of FLA. STAT.); Jim Saunders, *Scott Signs High-Profile Opioid Bill into Law*, ORLANDO SENTINEL: LOC. & ST., Mar. 20, 2018, at 1B.

17. *See Saunders, supra* note 16.

18. Jessica De Leon, *Opioid Prescriptions Now Have 3-Day Limit in Florida*, GOVERNING: HEALTH & HUM. SERVICES (Mar. 22, 2018), <http://www.governing.com/topics/health-human-services/tns-opioids-pills-florida-scott.html>.

19. Saunders, *supra* note 16; De Leon, *supra* note 18.

20. *See* Ch. 2018-13, § 3(5)(a), 2018 Fla. Laws at 8.

21. *Id.* § 3(b)-(c), 2018 Fla. Laws at 5.

prescribe within these guidelines will be penalized.<sup>22</sup> The law also sets aside about fifty-three million dollars from the budget in order to enhance opioid treatment and make it easier for law enforcement to respond to drug abuse and overdoses.<sup>23</sup> Section 456.0301 of the Florida Statutes, which became effective on July 1, 2018, requires those who are “authorized to prescribe controlled substances . . . to complete a board-approved [two]-hour continuing education course on prescribing controlled substances offered by a statewide professional association of physicians” within Florida.<sup>24</sup> House Bill 21 also requires the physician to “discuss the risks and benefits of the use of controlled substances.”<sup>25</sup> Acute pain treatment, according to the additions made to the statute, will be more heavily regulated.<sup>26</sup> Specifically, House Bill 21 indicates that a prescription for an opioid drug “may not exceed a [three]-day supply.”<sup>27</sup> There are exceptions where a seven-day supply may be prescribed.<sup>28</sup>

This article will first analyze the history and rise of the opioid epidemic nationally.<sup>29</sup> It will also discuss pharmaceutical companies’ marketing tactics and how they misrepresented their products.<sup>30</sup> Following the discussion on misrepresentation, class action lawsuits brought against pharmaceutical companies and/or doctors will be examined.<sup>31</sup> The main focus of this article, however, after providing important background information, will be on this newly passed bill in Florida and how the bill will impact the crisis.<sup>32</sup> This will be analyzed by comparing former Governor Scott’s approach in Florida to what is being done in other states.<sup>33</sup> Similarly, an analysis of other solutions, including how France handled a similar crisis, will be compared to how the United States is handling the opioid epidemic as a whole.<sup>34</sup>

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22. *Id.* § 3, 2018 Fla. Laws at 7–8.

23. *Id.* § 20, 2018 Fla. Laws at 105–06.

24. *Id.* § 1, 2018 Fla. Laws at 3; FLA. STAT. § 456.0301(1)(a) (2018).

25. Ch. 2018-13, § 3, 2018 Fla. Laws at 5.

26. *See id.* § 3, 2018 Fla. Laws at 7–8.

27. *Id.* § 3, 2018 Fla. Laws at 8.

28. *Id.*

29. *See discussion infra* Part II.

30. *See discussion infra* Part III.

31. *See discussion infra* Part IV.

32. *See discussion infra* Part V.

33. *See discussion infra* Part VI.

34. *See discussion infra* Part VII.

## II. HISTORY OF OPIOID MISUSE

A. *Worldwide History*

Opium was first found in ancient Mesopotamia around 3000 B.C.<sup>35</sup> The Sumerians called it the *plant of joy*.<sup>36</sup> Opium then spread to the Assyrians, the Egyptians, and then the Greeks.<sup>37</sup> “Around the same time, Alexander the Great [brought] opium to India” and used it during war.<sup>38</sup> “Around the fourth century A.D., opium [became available in] China through Arab traders . . . .”<sup>39</sup> A renowned Chinese surgeon would give his patients opium before surgery.<sup>40</sup>

“In 1527, Paracelsus, a Swiss-German alchemist . . . created opium pills and prescribed them as painkillers.”<sup>41</sup> His compound of opium, which was meant to reduce pain, was called laudanum.<sup>42</sup>

Similarly, opium was one of the products traded along the Silk Road.<sup>43</sup> Western countries exported opium grown in India to China.<sup>44</sup> Europeans used the profits from selling opium to purchase other Chinese luxury products.<sup>45</sup> With its addictive nature beginning to show, opium smoking became very popular in China, and *opium importations grew rapidly*.<sup>46</sup> By 1729, it became a serious problem and the sale and smoking of opium became prohibited in China.<sup>47</sup> Then, *opium importation and cultivation* became outlawed in China.<sup>48</sup> “[H]owever, the opium trade continued to flourish.”<sup>49</sup>

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35. Michael Waldrop, Note, *A Little Less Regulation: Why Federal Pain Management Laws Are Hurting State Efforts to Combat the Opioid Epidemic*, 43 MITCHELL HAMLINE L. REV. 881, 885 (2017).

36. *Id.* at 886.

37. *Id.*

38. *Id.*

39. *Id.* at 887.

40. Waldrop, *supra* note 35, at 887.

41. *Id.*

42. *Id.*

43. See *Opium Trade*, ENCYCLOPÆDIA BRITANNICA (Apr. 17, 2015), <http://www.britannica.com/topic/opium-trade>.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Opium Trade*, *supra* note 43.

49. *Id.*

Chinese immigration and the California Gold Rush brought opium to America.<sup>50</sup> Improvements in the field of medicine gave rise to increased opioid usage in the nineteenth century.<sup>51</sup> In 1806, morphine was isolated from opium.<sup>52</sup> “After its introduction into [United States] medicine, morphine [was used to treat] chronic pain . . . .”<sup>53</sup>

Today, reports indicate “a global increase in the production, transportation, and consumption of opioids, mainly heroin.”<sup>54</sup> “The worldwide production of heroin has more than doubled . . . since 1985.”<sup>55</sup> “Globally, it is estimated that [over thirteen] million people take opioids, including [roughly nine] million who use heroin.”<sup>56</sup>

### B. *American History Beginning in the 1900s*

The *soldier’s disease* began when Civil War veterans were given morphine and became dependent on it.<sup>57</sup> In 1898, the Bayer Company produced heroin.<sup>58</sup> It became a *wonder drug* as addicts realized that its effects were amplified when it was injected into the bloodstream.<sup>59</sup> “In 1909, Congress passed the Opium Exclusion Act, [which] barr[ed] opium imports for smoking purposes.”<sup>60</sup> However, this Act “did not apply to medicinal uses of opium.”<sup>61</sup> In 1914, Congress subsequently passed the Harrison Narcotics Tax Act.<sup>62</sup> “The original interpretation of the Act . . . required physicians and pharmacists to approve the distribution of opioids . . . .”<sup>63</sup> The Supreme Court of the United States expanded the Act to bar physicians from

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50. *Heroin, Morphine and Opiates*, HISTORY, <http://www.history.com/topics/crime/history-of-heroin-morphine-and-opiates> (last updated Aug. 21, 2018); Erick Trickey, *Inside the Story of America’s 19<sup>th</sup>-Century Opiate Addiction*, SMITHSONIAN.COM: HISTORY (Jan. 4, 2018), <http://www.smithsonianmag.com/history/inside-story-americas-19th-century-opiate-addiction>.

51. *Heroin, Morphine and Opiates*, *supra* note 50; Trickey, *supra* note 50.

52. Waldrop, *supra* note 35, at 887.

53. *Id.*

54. *Management of Substance Abuse: Opiates*, WHO, [http://www.who.int/substance\\_abuse/facts/opiates/en/](http://www.who.int/substance_abuse/facts/opiates/en/) (last visited Dec. 17, 2018).

55. *Id.*

56. *Id.*

57. Moghe, *supra* note 13; *see also* Waldrop, *supra* note 35, at 888.

58. Moghe, *supra* note 13.

59. *Id.*

60. Waldrop, *supra* note 35, at 888; *see also* Act of Apr. 1, 1909, Pub. L. No. 60-221, 35 Stat. 614 (1909).

61. Waldrop, *supra* note 35, at 888.

62. *Id.*; Trickey, *supra* note 50; *see also* Act of Dec. 7, 1914, Pub. L. No. 63-223, 38 Stat. 785 (1914).

63. Waldrop, *supra* note 35, at 888–89.

supplying addicts the opioids needed to maintain their addiction.<sup>64</sup> Therefore, addicts were forced to turn to the black market to find drugs.<sup>65</sup> Narcotics clinics, which supplied drugs to addicts, were established, but struck down due to the recent Supreme Court ruling.<sup>66</sup> Heroin became illegal in 1924.<sup>67</sup> Later, in 1938, Congress created the FDA “to oversee the safety of [prescription] drugs before they were sold.”<sup>68</sup>

C. 1970s–90s

Drug use in the United States continued to escalate in the 1970s as Percocet and Vicodin were added to the market.<sup>69</sup> A letter was printed in the *New England Journal of Medicine* in January 1980 stating that addiction is rare amongst those being treated with narcotics.<sup>70</sup> A paper written by pain-management specialist, Dr. Russell Portenoy, asserted that out of thirty-eight patients who were being treated with opioids, only two of them had issues with addiction.<sup>71</sup> Therefore, during this time, opioid therapy was considered safe and helpful.<sup>72</sup>

In 1970, Congress passed the “Controlled Substances Act, which placed all prescription narcotics and opioids into five . . . schedules.”<sup>73</sup> “The opioids placed in Schedule I were considered [extremely] dangerous” and were banned from being prescribed.<sup>74</sup> “By the mid-1970s, President Nixon had created the Drug Enforcement Agency (“DEA”) and . . . declared the War on Drugs.”<sup>75</sup> During the 1980s, physicians were afraid to prescribe opioids, even to patients who were terminally ill.<sup>76</sup>

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64. *Id.* at 889.

65. *Id.*

66. *Id.*

67. Moghe, *supra* note 13.

68. Waldrop, *supra* note 35, at 890.

69. Moghe, *supra* note 13.

70. *Id.*

71. *Id.*

72. *See id.*

73. Waldrop, *supra* note 35, at 890; *see also* Controlled Substances Act, Pub. L. No. 91-513, § 202 84 Stat. 1242, 1247 (1970) (codified as amended at 21 U.S.C. §§ 801–971 (2012)).

74. Waldrop, *supra* note 35, at 890.

75. *Id.*

76. *Id.* at 891. A physician’s fear of prescribing opioids was known as *opiophobia*. *Id.*

## D. 1996

In 1996, Purdue Pharma released OxyContin as a long-term painkiller.<sup>77</sup> Purdue Pharma created a video called “I Got My Life Back” in order to promote the painkiller.<sup>78</sup> The video followed six people with chronic pain that were treated with OxyContin.<sup>79</sup> The video was distributed to physicians to put in their waiting rooms.<sup>80</sup> Doctors in the video raved about the drug, ensuring users that it would not have any side effects.<sup>81</sup> Following the video, the number of painkiller prescriptions that were filled increased by eleven million.<sup>82</sup> Purdue Pharma also placed advertisements of OxyContin in journals across the nation.<sup>83</sup> The company conducted more than forty national pain management conferences in Florida, Arizona, and California.<sup>84</sup> Physicians, pharmacists, and nurses were recruited and trained with all expenses paid for.<sup>85</sup> Seven years later, the company was charged with misrepresenting the drug and its addictive nature.<sup>86</sup>

## E. 2001–2007

In 2001, pain management became a priority.<sup>87</sup> There was still no evidence that addiction would be an issue for those who were being prescribed opioids to treat their pain.<sup>88</sup> According to a published book that was sponsored by Purdue Pharma, “doctors’ concerns about addiction side effects [were] *inaccurate and exaggerated*.”<sup>89</sup> As prescribing pain medication continued to increase, so did the rates of opioid abuse, which doubled between 1998 and 2008.<sup>90</sup>

During the early 2000s, the George Bush Administration did not support indictments of Purdue Pharma’s executives and, instead, settled a

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77. Moghe, *supra* note 13.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. Moghe, *supra* note 13.

83. *Id.*

84. Art Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, 99 AM. J. PUB. HEALTH 221, 221 (2009).

85. *Id.*

86. Moghe, *supra* note 13.

87. *Id.*

88. *Id.*

89. *Id.*

90. Waldrop, *supra* note 35, at 892.



case against them in 2007.<sup>91</sup> The company “plead[ed] guilty to a felony charge of [misrepresenting] OxyContin.”<sup>92</sup> Three executives each pleaded guilty to a misdemeanor that “did not accuse them of any wrongdoing.”<sup>93</sup> “The company and the executives paid a combined \$634.5 million in fines and the men were required to perform community service.”<sup>94</sup> However, the fines were only considered a slap on the wrist for this multi-billion-dollar company.<sup>95</sup>

#### F. 2010

In 2010, an *abuse deterrent* form of OxyContin was created to “make it more difficult to . . . abuse [the drug] by snorting or injecting it.”<sup>96</sup> Before this new version of the drug was released, “35.6% of [patients] questioned admitted [to] abusing the drug;” however, two years after the deterrent was released, only about 12.8% reported drug abuse.<sup>97</sup> Of those, 24% of them still found a way to work around the deterrent feature of the medicine.<sup>98</sup>

#### G. 2016–Today

In 2016, overdose deaths were “[five] times higher than in 1999.”<sup>99</sup> Under the Obama administration, drug overdose became the leading cause of death for Americans under fifty-years-old.<sup>100</sup> Therefore, the FDA and CDC began addressing the opioid crisis.<sup>101</sup>

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91. Barry Meier, *Opioid’s Maker Hid Knowledge of Wide Abuse*, N.Y. TIMES, May 29, 2018, at A1.

92. *Id.*

93. *Id.*

94. *Id.*

95. See Ameet Sarpatwari et al., *The Opioid Epidemic: Fixing a Broken Pharmaceutical Market*, 11 HARV. L. & POL’Y REV. 463, 473 (2017); Meier, *supra* note 91.

96. Moghe, *supra* note 13.

97. *Id.*

98. *Id.*

99. *Understanding the Epidemic, supra* note 7. There have been three waves of opioid overdose deaths. *Id.* The first began in the 1990s, as opioid prescriptions increased. *Id.* The second wave was in 2010, which specifically involved heroin. *Id.* The third wave began in 2013, as synthetic opioids, particularly manufactured fentanyl, were added to the market. *Id.*

100. Josh Katz, *U.S. Drug Deaths Climbing Faster Than Ever*, N.Y. TIMES, June 6, 2017, at A1; *Opioid Lawsuits, supra* note 14; see also Waldrop, *supra* note 35, at 892–93.

101. Moghe, *supra* note 13.

President Donald Trump declared a public health emergency in October.<sup>102</sup> “His plan . . . includes harsher penalties for drug traffickers and lowering the amount of drugs needed to trigger mandatory minimum sentences for dealers.”<sup>103</sup> President Trump wants the death penalty to be considered as punishment for drug traffickers.<sup>104</sup> He also plans to increase research through “public-private partnerships between the . . . National Institutes of Health and pharmaceutical companies.”<sup>105</sup> Trump’s goals include an awareness campaign with commercials to scare children from using drugs.<sup>106</sup> “[He] wants to see the number of opioid prescriptions cut by one-third within three years.”<sup>107</sup> President Trump also seeks to provide better treatment centers and recovery outlooks.<sup>108</sup>

### III. PHARMACEUTICAL MARKETING & MISREPRESENTATION

#### A. *Purdue Pharma*

“Purdue Pharma introduced OxyContin in 1996 . . . [and] aggressively marketed” the product immediately.<sup>109</sup> “Sales grew from [forty-eight] million in 1996 to [over one] billion in 2000.”<sup>110</sup> Eight years after it was first introduced into the market, “OxyContin . . . bec[ame] a leading drug of abuse in the United States.”<sup>111</sup>

Purdue’s marketing plan focused on influencing physicians to prescribe their product.<sup>112</sup> The pharmaceutical company looked into each physician’s prescribing habits in order to determine how each physician would respond to its marketing.<sup>113</sup> In other words, the company was able to predetermine whether each physician would be an easy-sale or a hard-sale prior to meeting with each one of them.<sup>114</sup> After collecting its data, Purdue identified which physicians prescribed more often compared to which

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102. Kaitlyn Schallhorn, *How the White House Is Tackling the Opioid Epidemic*, FOX NEWS (Mar. 21, 2018), <http://www.foxnews.com/politics/2018/03/21/how-white-house-is-tackling-opioid-epidemic.html>.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Schallhorn, *supra* note 102.

108. *Id.*

109. Van Zee, *supra* note 84, at 221.

110. *Id.*

111. *Id.*

112. *Id.* at 222.

113. *Id.*

114. Van Zee, *supra* note 84, at 222.

physicians did not prescribe at all.<sup>115</sup> OxyContin was meant to target those who prescribed more frequently and significantly.<sup>116</sup>

In 2001, “Purdue paid [forty] million [dollars] in sales incentive bonuses to its sales representatives.”<sup>117</sup> Purdue also increased its number of representatives by more than double, from 318 to 671.<sup>118</sup> Because sales representatives were encouraged to sell more through a bonus system, the sales representatives also focused on physicians that they knew were already prescribing in order to make more bonus money.<sup>119</sup>

Primary care physicians were heavily pursued by these sales representatives.<sup>120</sup> As they comprised nearly half of all OxyContin prescribers by 2003, problems arose because “primary care physicians were not [adequately] trained in pain management,” nor did they understand the effects of the long-term use of painkillers.<sup>121</sup> “[T]he non-cancer-related pain market constituted 86% of the total opioid market in 1999.”<sup>122</sup> OxyContin prescriptions for non-cancer-related pain increased from about six hundred and seventy thousand in 1997 to approximately 6.2 million in 2002.<sup>123</sup> Since the launch of the extended-release oxycodone, Purdue has earned about thirty-one billion dollars in total revenue.<sup>124</sup>

As opioids began to be used liberally to treat non-cancer-related pain, the availability of all opioids increased.<sup>125</sup> “Nationwide, from 1997 to 2002, there was a 226%, 73%, and 402% increase in fentanyl, morphine, and oxycodone prescribing, respectively . . . .”<sup>126</sup> At the same time, the Drug Abuse Warning Network reported that emergency room patients were more insistent on receiving fentanyl, morphine, and oxycodone.<sup>127</sup> Over two million people stated that a prescription opioid was the “first drug they had tried.”<sup>128</sup> Most people who are abusing prescription opioids get their drugs from a doctor’s prescription or from their family’s or friend’s doctor’s prescription.<sup>129</sup>

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115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. Van Zee, *supra* note 84, at 222.

120. *Id.*

121. *Id.*

122. *Id.* at 223.

123. *Id.*

124. Sarpatwari et al., *supra* note 95, at 473.

125. Van Zee, *supra* note 84, at 224.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

When Purdue came out with OxyContin, it released commercials that advertised the risk of addiction as *less than one percent*.<sup>130</sup> “Purdue [also] trained its sales representatives” to market the drug with a low risk of addiction.<sup>131</sup> The company used unreliable studies to support its statement; one indicated that only 4 out of 11,882 patients using opioids suffered from addiction and the other found no addiction amongst a ten thousand-person burn victim sample.<sup>132</sup>

During an interview with a former sales representative who started with Purdue Pharma in 2008 and quit in 2013, Carol Panara stated that the company misrepresented the drug to the public and to their sales representatives.<sup>133</sup> She also stated that she was told to sell as much as she could to make money.<sup>134</sup> “[T]he company taught her to tell doctors that . . . patients [may] only appear to be addicted.”<sup>135</sup> The term was advertised as *pseudoaddiction*.<sup>136</sup> There was no empirical evidence to support *pseudoaddiction*.<sup>137</sup> With this term being used, sales tripled to an all-time high.<sup>138</sup>

Purdue Pharma claimed that it did not know about the side effects of OxyContin and the risks of its abuse.<sup>139</sup> The New York Times reported that a copy of a confidential Justice Department report indicates that Purdue Pharma knew of the abuse of OxyContin immediately after the drug was introduced, but hid that information.<sup>140</sup> The company had reports that “the pills were being crushed and snorted, stolen,” and improperly prescribed.<sup>141</sup> The one hundred and twenty page report included emails to the owners of the pharmaceutical company of data showing its misuse.<sup>142</sup>

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130. Van Zee, *supra* note 84, at 223 (quoting BARRY MEIER, PAIN KILLER: A WONDER DRUG’S TRAIL OF ADDICTION AND DEATH 99 (2003)).

131. *Id.*

132. *Id.*

133. *Purdue Pharma Misrepresented Impact of OxyContin, Former Sales Rep Says*, CBS NEWS (June 21, 2018, 6:41 PM), <http://www.cbsnews.com/video/purdue-pharma-misrepresented-impact-of-oxycontin-former-sales-rep-says/>.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Purdue Pharma Misrepresented Impact of OxyContin, Former Sales Rep Says*, *supra* note 133.

139. *See* Meier, *supra* note 91.

140. *Id.*

141. *Id.*

142. *Id.*

## B. FDA's Response

Under the Food, Drug, and Cosmetics Act, the FDA regulates the advertising and marketing of prescription drugs to ensure that the promotions are truthful and properly communicated.<sup>143</sup> The FDA's resources are limited in that they do not have enough staff members to monitor all promotional materials.<sup>144</sup> "In 2002, [only thirty-nine] FDA staff members were responsible for reviewing roughly [thirty-four thousand] pieces of promotional materials."<sup>145</sup> "In 1998, Purdue distributed [fifteen thousand] copies of an OxyContin video to physicians [prior to] submitting it to the FDA for review . . . ."<sup>146</sup> "In 2001, Purdue submitted to the FDA a second version of the video, [but] the FDA did not review [it] until October 2002 . . . ."<sup>147</sup> After its review, the FDA determined that the video misrepresented the product and *minimized the risks*.<sup>148</sup>

OxyContin was approved by the FDA in 1996.<sup>149</sup> When the FDA approved OxyContin, it allowed the pharmaceutical company to state that its long-acting formulation was believed to lessen the appeal to drug abusers.<sup>150</sup> The original label stated that addiction was *very rare* if opioids were used properly to manage pain.<sup>151</sup> In 2001, the label was modified to state that there was no scientific data available that analyzed the risk of addiction in chronic-pain patients.<sup>152</sup> Today, "[o]ne of the highest priorities of the FDA is . . . to address the crisis" that has affected many families nationwide.<sup>153</sup>

## IV. LAWSUITS

Between 2004 and 2017, there have been multiple class action lawsuits against opioid companies.<sup>154</sup> The most common argument against

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143. Van Zee, *supra* note 84, at 224; *see also* Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 333 (2017).

144. *See* Van Zee, *supra* note 84, at 224.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Van Zee, *supra* note 84, at 224.

150. *See* Purdue Pharma Misrepresented Impact of OxyContin, Former Sales Rep Says, *supra* note 133.

151. Van Zee, *supra* note 84, at 224.

152. *Id.*

153. *Opioid Medications*, U.S. FOOD & DRUG ADMIN.: DRUGS (June 14, 2018), <http://www.fda.gov/Drugs/DrugSafety/InformationbyDrugClass/ucm337066.htm>.

154. *See* Alana Semuels, *Are Pharmaceutical Companies to Blame for the Opioid Epidemic?*, ATLANTIC: BUS. (June 2, 2017),

opioid makers is that the pharmaceutical companies knew or should have known that their products could lead to addiction and misrepresented that risk.<sup>155</sup> Suing pharmaceutical companies that downplayed the addictive nature of these drugs is based on precedent.<sup>156</sup> In 1998, state attorneys general sued tobacco companies to hold them responsible for tobacco-related diseases.<sup>157</sup> Thereafter, the tobacco companies agreed to make annual payments to the states to help fund anti-tobacco programs and campaigns.<sup>158</sup>

There have been private and government lawsuits filed against pharmaceutical companies.<sup>159</sup> Individuals and families have filed thousands of lawsuits against doctors and corporations, holding them responsible for the loss of a family member.<sup>160</sup> Their claims are that drug companies underplayed the risks of addiction, that doctors prescribed too much and did not recognize the signs of addiction, and that pharmacies did not monitor the over-distribution of the drugs.<sup>161</sup> In many cases, the plaintiffs allege that their addiction or their family member's addiction started with prescription opioids, but led to heroin.<sup>162</sup>

Counties, cities, states, and the federal government have also been involved in lawsuits against pharmaceutical companies.<sup>163</sup> “President Donald Trump . . . declared the opioid crisis a Nationwide Public Health Emergency.”<sup>164</sup> “[The Department of Justice] officials announced that they would share data related to prescription painkiller sales with state and local governments to facilitate opioid lawsuits against drug companies.”<sup>165</sup>

State entities have been more successful than individuals at suing pharmaceutical companies because they cannot be accused of misusing the drug.<sup>166</sup> In other words, they are not contributorily negligent because states have suffered financial consequences while never ingesting the drug.<sup>167</sup> The state government lawsuits included arguments that the companies created

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<http://www.theatlantic.com/business/archive/2017/06/lawsuit-pharmaceutical-companies-opioids/529020/>.

155. See *id.*; Rebecca L. Haffajee & Michelle M. Mello, *Drug Companies' Liability for the Opioid Epidemic*, 377 NEW ENG. J. MED. 2301, 2301 (2017).

156. Semuels, *supra* note 154.

157. *Id.*

158. *Id.*

159. *Opioid Lawsuits*, *supra* note 14.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Opioid Lawsuits*, *supra* note 14.

165. *Id.*

166. Semuels, *supra* note 154.

167. *Id.*

great financial costs for the states as they fought against addiction.<sup>168</sup> In June 2018, Purdue Pharma laid off its entire sales team, as twenty-four states sued the company.<sup>169</sup>

Because “Ohio leads the nation in overdose deaths,” in 2017, the Attorney General of Ohio sued Purdue Pharma, Teva Pharmaceuticals, and Johnson & Johnson.<sup>170</sup> Ohio sued for restitution for consumers and compensation for the Department of Medicaid, which paid for opioid prescriptions.<sup>171</sup> Other similar lawsuits were filed in Illinois, Mississippi, four counties in New York, and two counties in California.<sup>172</sup>

Within the last couple of months, Palm Beach County, in Florida, filed a lawsuit against over two dozen individuals and companies—including CVS, Walmart, and Walgreens—“alleging that their negligence and deceptive trade practices contributed to the . . . opioid crisis.”<sup>173</sup> The complaint represents Palm Beach County’s effort to be reimbursed for all the money it spent fighting the epidemic that has taken the lives of many nationwide.<sup>174</sup> “Palm Beach County [had] the highest number of opioid overdose[s] . . . in . . . 2015 and 2016.”<sup>175</sup> It holds the drug companies responsible for misleading consumers and causing deaths, substance abuse disorders, and homelessness.<sup>176</sup>

As lawsuits continue to be filed, states have also enacted legislation to try to limit prescription painkillers and prevent new addiction.<sup>177</sup>

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168. *Id.*

169. *Purdue Pharma Misrepresented Impact of Oxycontin, Former Sales Rep Says*, *supra* note 133.

170. Semuels, *supra* note 154.

171. *Id.*

172. *Id.*

173. Wayne Washington, *County Sues Walmart, CVS, Drug Firms; Suit Alleges Their Negligence Has Fueled Ongoing Opioid Crisis*, *PALM BEACH POST*, Apr. 6, 2018, at A1.

174. Tori Simkovic, *Palm Beach County Sues Pharmaceutical Companies over Opioid Epidemic*, 25 *WPBF NEWS* (Apr. 6, 2018, 9:42 AM), <http://www.wpbf.com/article/palm-beach-county-sues-pharmaceutical-companies-over-opioid-epidemic/19700914>; *see also* Washington, *supra* note 173.

175. Simkovic, *supra* note 174.

176. *Id.*; Washington, *supra* note 173.

177. *See* Act effective July 1, 2018, ch. 2018-13, § 1, 2018 Fla. Laws 1, 3 (codified in scattered sections of FLA. STAT.); *Opioid Lawsuits*, *supra* note 14.

## V. FLORIDA'S NEW BILL

A. *House Bill 21*

House Bill 21 is an act related to controlled substances.<sup>178</sup> It mandates practitioners, as a part of their license renewal, to complete a *continuing education course* in order to prescribe controlled substances.<sup>179</sup> It also requires certain boards to put forth rules that control prescribing habits for acute pain.<sup>180</sup> House Bill 21 amends the law in Florida in order to better regulate and train prescribers.<sup>181</sup>

The two-hour training course—which is now required by House Bill 21—must include information on the current standards for prescribing opiates.<sup>182</sup> The course must also demonstrate that there are alternatives to treating pain, including natural remedies.<sup>183</sup> The physicians will be taught the risks of opioid addiction when dealing with acute pain.<sup>184</sup>

Acute pain is defined as the “normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness.”<sup>185</sup> Acute pain does not include pain resulting from cancer, a terminal condition, palliative care for incurable illness or injury, or “[a] traumatic injury with an Injury Severity Score of [nine] or greater.”<sup>186</sup>

House Bill 21 sets forth guidelines for prescribing controlled substances for acute pain.<sup>187</sup> The physician must conduct an evaluation of the patient, create a treatment plan, obtain consent, consistently review the treatment plan and medical records, and comply with the law.<sup>188</sup> “Failure of a prescriber to follow [these] guidelines constitutes grounds for disciplinary action. . . .”<sup>189</sup>

There are five classes of controlled substances.<sup>190</sup> Schedule I and II have “a high potential for abuse”.<sup>191</sup> Schedule I, however, is not accepted as

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178. Ch. 2018-13, § 1, 2018 Fla. Laws at 3.

179. *Id.*

180. *Id.*

181. *See id.*

182. *Id.*

183. *See* Ch. 2018-13, § 1(a), 2018 Fla. Laws at 3.

184. *Id.*

185. *Id.* § 3(1)(a), 2018 Fla. Law at 4.

186. *Id.* at 4–5.

187. *Id.*

188. Ch. 2018-13, § 3, 2018 Fla. Laws at 4–5.

189. *Id.* at 7–8.

190. 21 U.S.C. § 812(a) (2018).

191. *Id.* § 812(b)(1)–(2).



treatment in the United States, while Schedule II is.<sup>192</sup> Schedule III “has a potential for abuse,” but it is less likely compared to the drugs in Schedules I and II.<sup>193</sup> Schedule IV and V have “a low potential for abuse”, and the abuse of the drugs in those schedules only “lead to limited physical dependence.”<sup>194</sup> House Bill 21 also adds and reschedules substances to the various schedules of controlled substances.<sup>195</sup>

Acute pain treatment with Schedule II controlled substances, according to the additions made to the statute, will be more heavily regulated.<sup>196</sup> Specifically, a prescription for an opioid may not exceed a three-day supply.<sup>197</sup> There are exceptions where a seven-day supply may be prescribed.<sup>198</sup> The bill states that:

For the treatment of acute pain, a prescription for an opioid drug . . . as a Schedule II controlled substance . . . may not exceed a [three]-day supply, except that up to a [seven]-day supply may be prescribed if: [t]he prescriber, in his or her professional judgment, believes that more than a [three]-day supply of such an opioid is medically necessary to treat the patient’s pain as an acute medical condition; the prescriber indicates [*acute pain exception*] on the prescription; and [t]he prescriber adequately documents in the patient’s medical records the acute medical condition and lack of alternative treatment options that justify deviation from the [three]-day supply limit established in this subsection.<sup>199</sup>

House Bill 21 will add Schedule V drugs to the list of drugs that are required to be reported to the Prescription Drug Monitoring Program (“PDMP”).<sup>200</sup> Other additions to the PDMP include: Requiring physicians to refer to the PDMP before distributing prescriptions, providing the Department of Health with the ability to give other states access to Florida’s PDMP, and allowing physicians with Veterans Affairs, the military, the

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192. *Id.* § 812(b)(3).

193. *Id.*

194. *Id.* § 812(b)(4)–(5).

195. *See* Act effective July 1, 2018, ch. 2018-13, § 8, 2018 Fla. Laws 1, 17. (codified in scattered sections of FLA. STAT.).

196. *See id.*; 21 U.S.C. § 812.

197. Ch. 2018-13, § 3, 2018 Fla. Laws at 8.

198. *Id.*

199. *Id.*

200. *Id.* § 10, 2018 Fla. Laws at 60; Jeff Scott, *Florida’s New Law on Controlled Substance Prescribing*, FLA. MED. ASS’N, [http://www.flmedical.org/Florida/Florida\\_Public/Docs/FMA-Opioid-HB21.pdf](http://www.flmedical.org/Florida/Florida_Public/Docs/FMA-Opioid-HB21.pdf) (last visited Dec. 17, 2018).

Indian Health Services, and Florida medical examiners to look at and add to the data found within the PDMP.<sup>201</sup>

House Bill 21 also includes guidelines for pharmacists.<sup>202</sup> Specifically, pharmacists must verify the patient's identity before giving him or her a controlled substance while using the PDMP.<sup>203</sup>

The appropriations for 2018–2019 include “[f]und[s] to the Department of Children and Families for expenditure[s]” related to the opioid crisis, funds to the Department of Health to provide emergency opioid antagonists to first responders, including police officers and EMTs, funds for the criminal justice system, and funds to improve the PDMP.<sup>204</sup>

Under House Bill 21, a patient or practitioner who knowingly receives or prescribes a controlled substance that is not medically necessary will now be subject to a second-degree felony.<sup>205</sup> House Bill 21 became effective on July 1, 2018.<sup>206</sup>

## B. *Community Response*

Before House Bill 21 was signed by the Governor, some physicians objected to the proposed limits.<sup>207</sup> Since physicians can no longer prescribe thirty days' worth of painkillers, House Bill 21 seems to be inconvenient to patients and physicians, who will have to spend more time meeting with one another.<sup>208</sup> Although it may seem inconvenient, it is an inconvenience that can save thousands of lives nationwide.<sup>209</sup>

Another part of the bill requires physicians and pharmacists to monitor the statewide database before prescribing opioids to a patient.<sup>210</sup> The purpose of the database is to inhibit an addict's means of receiving drugs

201. Ch. 2018-13, § 10, 2018 Fla. Laws at 57, 58, 60; Scott, *supra* note 200.

202. Ch. 2018-13, § 6(1), 2018 Fla. Laws at 14; Danny McAuliffe, *Pharmacy Panel Weighs Implementation of New Opioid Laws*, FLA. POL. (Apr. 2, 2018, 5:00 PM), <http://floridapolitics.com/archives/260293-pharmacy-panel-weighs-implementation-of-new-opioid-laws>.

203. Ch. 2018-13, § 6(2)(a), 2018 Fla. Laws at 14.

204. *Id.* § 20, 2018 Fla. Laws at 105–06.

205. *Id.* § 2, 2018 Fla. Laws at 1–2, 4.

206. *Id.* § 21, 2018 Fla. Laws at 106; Scott, *supra* note 200.

207. News Service of Florida, *Rick Scott Signs Bill Targeting Opioid Addiction*, FLA. POL. (Mar. 19, 2018, 12:35 PM), <http://www.floridapolitics.com/archives/259262-rick-scott-signs-bill-targeting-opioid-addiction>; *see also* Ch. 2018-13, § 21, 2018 Fla. Laws at 106.

208. News Service of Florida, *supra* note 207; *see also* Ch. 2018-13, § 2, 2018 Fla. Laws at 4.

209. News Service of Florida, *supra* note 207.

210. *Id.*; *see also* Ch. 2018-13, § 10(1)–(2)(a), 2018 Fla. Laws at 56.

from multiple doctors.<sup>211</sup> Therefore, failing to check the database will result in a citation, which may escalate to a misdemeanor.<sup>212</sup> Physicians and pharmacists have never had to use this database before.<sup>213</sup> The main concern amongst pharmacists is how the new law and citations will be enforced.<sup>214</sup> Pharmacists are also concerned with how the database will “affect the practice of pharmacy.”<sup>215</sup>

There was also an attempt to remove the two-hour continuing education requirement that must be administered by a statewide professional association of physicians in Florida.<sup>216</sup> There are only four groups that offer this course: “The Florida Medical Association, the Florida Osteopathic Medical Association, the Florida Academy of Family Physicians, and the Florida Psychiatric Society.”<sup>217</sup> These associations charge for the continuing education course.<sup>218</sup> There was an argument that the associations will receive a lot of revenue from this requirement, which is why they support it heavily.<sup>219</sup> These associations are not the only groups that can offer the course, however, as any group can take steps to become certified.<sup>220</sup>

## VI. WHAT ARE OTHER STATES DOING?

### A. Generally

Setting a seven-day supply limit for initial opioid prescriptions, Massachusetts passed the first opioid-limiting law in the nation.<sup>221</sup> At the end of 2016, seven states had created laws that minimized opioid prescribing; this movement continued in 2017.<sup>222</sup> Over thirty states

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211. News Service of Florida, *supra* note 207.

212. Ch. 2018-13, § 10(8)(c), 10(8)(c)–(9), 2018 Fla. Laws at 60–61.

213. News Service of Florida, *supra* note 207.

214. McAuliffe, *supra* note 202.

215. *Id.*

216. Drew Wilson, *Senate Rejects Changes to Course Requirement in Opioid Bill*, FLA. POL. (Mar. 7, 2018, 4:47 PM), <http://floridapolitics.com/archives/258365-senate-rejects-changes-course-requirement-opioid-bill>.

217. *Id.*

218. Drew Wilson, *Senate Keeps National Accreditation Requirement from House Opioid Bill*, FLA. POL. (Mar. 7, 2018, 7:21 AM), <http://floridapolitics.com/archives/258284-senate-keeps-pro-fma-language-house-opioid-bill>.

219. *Id.*

220. Wilson, *supra* note 216.

221. Kate Blackman, *Prescribing Policies: States Confront Opioid Overdose Epidemic*, NAT'L CONF. ST. LEGISLATURES (Apr. 5, 2018), <http://www.ncsl.org/research/health/prescribing-policies-states-confront-opioid-overdose-epidemic.aspx>.

222. *Id.*

contemplated laws that had to do with controlled substance prescriptions in 2016 and 2017.<sup>223</sup> By 2018, twenty-eight states had created laws that had limits on prescribing opioids.<sup>224</sup> Seven days is the most common limit on first-time opioid prescriptions.<sup>225</sup> Some states have a three-day, five-day, or fourteen-day limit; however, in a few states, there are also dosage limits.<sup>226</sup> About half of the states that have imposed prescribing limits indicate that they apply to acute pain treatment and set exceptions for the treatment of chronic pain.<sup>227</sup> Another exception within these limiting laws is cancer treatment; in order to apply, the exception must be included on the prescription and kept in the patient's medical record.<sup>228</sup>

Most states focus on general opioid prescribing, but a few states, including Alaska, Connecticut, Indiana, Louisiana, Massachusetts, Nebraska, Pennsylvania, and West Virginia, also set limits that pertain specifically to minors.<sup>229</sup> These laws control opioid prescriptions to minors, as compared to only initial opioid prescriptions for adults.<sup>230</sup> Some also require discussions regarding risks of addiction with the minor and his or her parents.<sup>231</sup>

Rather than limits by statute, a few state laws in New Hampshire, Ohio, Oregon, Vermont, Virginia, Washington, and Wisconsin authorize other entities to set forth prescribing guidelines.<sup>232</sup> These entities may be the state's department of health or a provider regulatory board.<sup>233</sup> Rhode Island and Utah have limits that are indicated by statute and also "allow other entities to adopt prescribing policies."<sup>234</sup>

Some state laws guide prescribers in order to limit opioid overuse.<sup>235</sup> In Maryland, physicians can only prescribe the lowest dose needed to treat the pain for the amount of time the pain is supposed to last.<sup>236</sup> Utah gives "commercial insurers, the state Medicaid program, workers' compensation insurers, and public employee insurers" the ability to put forth policies

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223. *Id.*

224. *Id.*

225. *Id.*

226. Blackman, *supra* note 221.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. Blackman, *supra* note 221.

232. *Id.*

233. *Id.*

234. *Id.*

235. *See id.*

236. Blackman, *supra* note 221.

regarding controlled substance prescribing.<sup>237</sup> The policies must guide physicians to engage in proper prescribing techniques.<sup>238</sup>

States are also tackling the epidemic by enacting “laws related to [PDMPs], access to naloxone, pain clinic regulation, [and] provider education and training.”<sup>239</sup> PDMPs help physicians understand a patient’s prescription history in order to protect vulnerable patients.<sup>240</sup> Recently, states, including Florida, have passed bills to require providers to register with the PDMP.<sup>241</sup>

Naloxone is used to undo the effects of opioids while a person is overdosing.<sup>242</sup> Some states have allowed pharmacists to give out naloxone even if the patient does not have a prescription.<sup>243</sup> Similarly, family members, school employees, police officers, and first responders are now able to keep naloxone readily available to use when necessary.<sup>244</sup>

States are also scrutinizing pain clinics that treat chronic pain.<sup>245</sup> These laws attempt to limit prescriptions in pain clinics.<sup>246</sup> This is needed because there are some pain clinics that distribute medication in order to make money, rather than because the patient needs them; this leads to excess prescriptions and drug misuse.<sup>247</sup> These laws are successful in the parts of the country where pain clinics are acting unethically.<sup>248</sup>

In summary, state legislators are fighting the opioid epidemic in different ways.<sup>249</sup> It is challenging to treat pain and prevent drug misuse at the same time.<sup>250</sup> In the past few years, state leaders in twenty-eight states adopted guidelines or limits on prescribing opioids.<sup>251</sup> The states that have lost the most lives to the opioid crisis are listed below, along with their specific policies and goals for combating the epidemic.<sup>252</sup>

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237. *Id.*

238. *Id.*

239. *Id.*

240. *See id.*

241. Scott, *supra* note 200.

242. Blackman, *supra* note 221.

243. *Id.*

244. *Id.*

245. *See id.*

246. *See id.*

247. Blackman, *supra* note 221.

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *See* N.H. CODE ADMIN. R. ANN. Med 502 (2018); W. VA. CODE § 30-3A-3 (2018); *Emergency Department (ED) Pain Treatment Guidelines*, PA. MED. SOC’Y 2 (2014), <http://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Documents/PA%20Guidelines%20Emergency%20Department.pdf>; Jordyn Grzelewski, *Ohio Introduces New Opioid*

## B. *New Hampshire*

The New Hampshire Board of Medicine adopted opioid prescribing rules, which became effective in January 2017.<sup>253</sup> Pursuant to New Hampshire Code of Administrative Rules Med 502, providers must conduct a physical examination on the patient and document his or her medical history.<sup>254</sup> They must also “consider the patient’s risk for opioid . . . abuse,” keep track of opioid prescriptions, provide the patient with information regarding side effects and dangers, and “[u]tilize a written informed consent [form] that explains the . . . risks associated with opioids.”<sup>255</sup> Providers may “[n]ot prescribe more than the minimum amount of opioids medically necessary to treat the patient’s medical condition.”<sup>256</sup> “In most cases, an opioid prescription of [three] or fewer days is sufficient,” however, in an emergency department, a prescription for more than seven days is not permitted.<sup>257</sup>

## C. *Ohio*

“The opioid epidemic has [impacted] nearly every aspect of life in Vinton County, [Ohio].”<sup>258</sup> The expenses involved in caring for drug abusers eats up 25% of the county’s annual budget.<sup>259</sup> In response to the epidemic, effective August 31, 2017, the governor of Ohio added new limits on opioid prescriptions for acute pain.<sup>260</sup> The limits include:

- (1) No more than seven days of opioids can be prescribed for adults.
- (2) No more than five days of opioids can be prescribed for minors and only after the written consent of the parent or guardian is obtained . . .
- (3) Health care providers may prescribe opioids in excess of the day supply limits only if they provide a specific reason in the patient’s medical record.

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*Prescription Guidelines for Acute Pain*, VINDICATOR (Sept. 16, 2017, 12:09 AM), <http://www.vindy.com/news/2017/sep/16/kasich-introduces-new-limits-on-opioid-p/>.

253. *Opioid Prescribing*, OFF. PROF. LICENSURE & CERTIFICATION: N.H. BOARD MED., <http://www.oplc.nh.gov/medicine/opioid-prescribing.htm> (last visited Dec. 17, 2018).

254. N.H. CODE ADMIN. R. ANN. Med 502.04(a).

255. *Id.* 502.04(b), (h).

256. *Id.* 502.04(i)(1).

257. *Id.*

258. Katie Zezima, *Epic Opioid Battle Moves to an Ohio Courtroom*, WASH. POST, Apr. 8, 2018, at A12.

259. *Id.*

260. Grzelewski, *supra* note 252.

(4) [T]he total morphine equivalent dose (“MED”) of a prescription for acute pain cannot exceed an average of [thirty] MED[s] per day.<sup>261</sup>

These limits indicate Ohio’s goals in reducing the number of opioids prescribed.<sup>262</sup> With these new limits, it is estimated that the state will reduce opioid doses by 109 million.<sup>263</sup> With the reduction of prescriptions, there will be less cases of misuse and abuse.<sup>264</sup>

#### D. *Pennsylvania*

Pennsylvania has experienced an alarming rise in drug overdose deaths in recent years.<sup>265</sup> In 2016, 4642 individuals were reported to have died from a drug overdose in the state; 85% of those were specifically as a result of prescription or illicit opioids.<sup>266</sup> In Pennsylvania, there are guidelines for all different kinds of providers: Dentists, gynecologists, pediatricians, emergency room physicians, etc.<sup>267</sup> The guidelines set forth for acute pain in emergency room settings are as follows.<sup>268</sup> First, patients suffering from acute pain will be subject to a physical examination.<sup>269</sup> When a patient is discharged from the hospital, his or her prescription should typically not exceed seven days.<sup>270</sup> Non-opioid medicines should be considered as alternatives or concurrent treatment with opioids.<sup>271</sup> “When opioids are [needed], the provider should choose the lowest potency opioid necessary to relieve the patient’s pain.”<sup>272</sup> “Emergency providers should not prescribe long-acting opioid agents . . . .”<sup>273</sup> Multiple providers should not

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261. BD. OF PHARM., STATE OF OHIO, FOR PRESCRIBERS — NEW LIMITS ON PRESCRIPTION OPIOIDS FOR ACUTE PAIN (2017), <http://www.pharmacy.ohio.gov/documents/pubs/Special/ControlledSubstances/For%20Prescribers%20-%20New%20Limits%20on%20Prescription%20Opioids%20for%20Acute%20Pain.pdf>.

262. Grzelewski, *supra* note 252.

263. *Id.*

264. *See id.*

265. Sam Wood & Don Sapatkin, *Fatal Overdoses Up 37% in Pa. in 2016: A New DEA Report Shows Fentanyl Becoming More Common than Heroin in Some Counties*, PHILA. INQUIRER, June 9, 2017, at A1.

266. *Id.*

267. *Get Pennsylvania’s Opioid Prescribing Guidelines*, PA. MED. SOC’Y, <http://www.pamedsoc.org/detail/article/PA-Opioid-Guidelines> (last visited Dec. 17, 2018).

268. *Emergency Department (ED) Pain Treatment Guidelines*, *supra* note 252.

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Emergency Department (ED) Pain Treatment Guidelines*, *supra* note 252.

be prescribing pain medication at the same time.<sup>274</sup> “Emergency [room] providers should [also] not fill prescriptions for patients who run out of pain medication[] . . . .”<sup>275</sup> Lastly, in Pennsylvania, patients who show signs of “addiction should be encouraged to seek detoxification” and will be assisted in the process by the provider.<sup>276</sup>

#### E. *West Virginia*

West Virginia suffered the greatest loss in the nation to the opioid epidemic with a drug death rate of fifty-two per hundred thousand people.<sup>277</sup> The Management of Pain Act is a statutory provision governing prescription pain medication in West Virginia.<sup>278</sup> A prescriber is subject to disciplinary action if he or she fails to maintain documentation of the physical examination and medical history of the patient, writes a fake prescription for a controlled substance, or is involved in *[a]bnormal or unusual prescribing*.<sup>279</sup> A licensing board may conduct an investigation if the board believes the prescriber has engaged in such acts.<sup>280</sup>

#### F. *Conclusion*

A study was conducted to determine the effect of state laws on overdose deaths and treatment.<sup>281</sup> The findings indicated that both “pain management clinic law[s] . . . [and] doctor shopping law[s] reduce[] prescription opioid overdose deaths.”<sup>282</sup> The implementation of pain management clinic laws reduces the amount of opioid-related overdoses by 9.6%.<sup>283</sup> Similarly, doctor shopping laws “reduce[] prescription opioid

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274. *Id.*

275. *Id.*

276. *Id.*

277. *Drug Overdose Death Data*, CDC: OPIOID OVERDOSE <http://www.cdc.gov/drugoverdose/data/statedeaths.html> (last updated Dec. 19, 2017).

278. W. VA. CODE § 30-3A-3 (2018).

279. W. VA. CODE § 30-3A-3(a)(1), (2), (5).

280. *See id.*

281. Ioana Popovici et al., *The Effect of State Laws Designed to Prevent Nonmedical Prescription Opioid Use on Overdose Deaths and Treatment*, 27 HEALTH ECON. 294, 295 (2018). “Several studies suggest that PDMPs have the potential to reduce nonmedical use of prescription opioids . . . [along with] treatment admissions.” *Id.* Nonetheless, “state PDMPs do not seem effective in reducing prescription opioid overdose mortality.” *Id.* Other solutions, therefore, need to be analyzed. *See id.*

282. *Id.* at 301.

283. Popovici et al., *supra* note 281, at 301.



overdose deaths by 8.5%.<sup>284</sup> Therefore, state action has helped control the opioid epidemic and has begun to save lives.<sup>285</sup>

## VII. OTHER POSSIBLE PROBLEMS & PROPOSED SOLUTIONS

### A. *France vs. United States*

France was consumed by a heroin epidemic in the 1980s and 1990s.<sup>286</sup> In 1995, France passed a law giving all doctors the ability to prescribe buprenorphine.<sup>287</sup> Buprenorphine, a non-addictive drug that is used to treat opioid addicts, minimizes an addict's yearnings for opioids.<sup>288</sup> The doctors who were prescribing buprenorphine in France were mainly primary-care doctors.<sup>289</sup> After this drug was implemented into doctors' treatment plans, half of all addicts were led to recovery.<sup>290</sup> Four years later, overdoses decreased by 79%.<sup>291</sup>

Compared to France, the laws in the United States require doctors to take an eight-hour class in order to be able to use buprenorphine.<sup>292</sup> The law does not require a doctor to take a class in order to prescribe opioids, however.<sup>293</sup> The classes that are required to be able to prescribe buprenorphine are expensive and time-consuming.<sup>294</sup> Along with the class requirement, doctors may not take more than a certain number of buprenorphine patients—although “Congress is considering waiving this limit.”<sup>295</sup> In a study, the results indicated that 10% of doctors do not know how to obtain the waiver required to be able to prescribe buprenorphine.<sup>296</sup> According to a psychiatrist specializing in addiction at Brandeis University, many primary-care doctors do not even like the idea of working with addicts.<sup>297</sup>

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284. *Id.*

285. *See id.*

286. Olga Khazan, *How France Cut Heroin Overdoses by 79 Percent in 4 Years*, ATLANTIC: HEALTH (Apr. 16, 2018), <http://www.theatlantic.com/health/archive/2018/04/how-france-reduced-heroin-overdoses-by-79-in-four-years/558023/>.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. Khazan, *supra* note 286.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. Khazan, *supra* note 286.

297. *Id.*

The American healthcare system has other issues that make using France's solution difficult.<sup>298</sup> Even though Medicaid pays for a large amount of all drug-abuse treatment, state programs have limits on buprenorphine.<sup>299</sup> Similarly, doctors are aware that if they begin to prescribe buprenorphine, most of their patients will be addicts, and there will not be room for others.<sup>300</sup> A solution to this problem is to require those who prescribe painkillers to also prescribe buprenorphine.<sup>301</sup>

In Parkersburg, West Virginia, a state with the greatest number of overdose deaths in the country, only ten doctors who prescribe buprenorphine were found in a fifty-mile radius.<sup>302</sup> Of those ten, three did not take insurance and cost hundreds of dollars, one had a waiting list, and one could not be reached.<sup>303</sup> Only one doctor "accept[ed] new buprenorphine patients and . . . insurance."<sup>304</sup> Since the cost of treatment is more expensive than the cost of heroin in the United States, most addicts cannot find the means to recover from addiction.<sup>305</sup>

#### B. *Other Issues & Solutions*

There are other solutions that have been proposed but not yet implemented.<sup>306</sup> There have been recommendations made to Congress to fund increased resources to emergency rooms.<sup>307</sup> Emergency departments should have *opioid dependence screening tools*, "training . . . on how to address . . . opioid dependent individuals," and "referral sources for outpatient addiction . . . clinics," especially for those who do not have insurance.<sup>308</sup>

Physicians depend on PDMPs to identify improper opioid prescribing history.<sup>309</sup> These systems, however, are separate in each state and therefore, create *blind spots* for abuse.<sup>310</sup> Also, in many states, data is

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298. *Id.*

299. *Id.*

300. *Id.*

301. Khazan, *supra* note 286.

302. *Id.*

303. *Id.*

304. *Id.*

305. *See id.*

306. *See* Joel White & Lee Ann Stember, *A 21st-Century Solution to the Opioid Crisis*, HILL: OPINION (Mar. 28, 2018, 6:00 AM), <http://www.thehill.com/opinion/healthcare/380592-a-21st-century-solution-to-the-opioid-crisis>.

307. Hoban, *supra* note 1.

308. *Id.*

309. White & Stember, *supra* note 306.

310. *Id.*

not available immediately and does not include fill attempts, which would indicate pharmacy shopping.<sup>311</sup> PDMP information is not a part of doctors' or pharmacists' systems for the most part.<sup>312</sup> This forces them to take time out of being with the patient to go on a separate system to check the patient's opioid history.<sup>313</sup> A study regarding PDMPs in Massachusetts indicated that the "process took over four minutes and [fifty-three] . . . clicks" to conduct.<sup>314</sup> That being said, a Pew study indicated that "the median rate of PDMP usage among prescribers [is about 32%]."<sup>315</sup> Doctors know they cannot see everything regarding the patient's opioid history and choose to forgo the process.<sup>316</sup> Now, the process in many states, including Florida, is required.<sup>317</sup>

As a more effective mechanism than PDMPs:

Walgreens, Oracle, Centerstone, the National Alliance on Mental Illness, the Brain Injury Association of America, MedStar Health . . . Health IT Now and the National Council for Prescription Drug Programs (NCPDP) [are using] a nationwide . . . and real-time drug monitoring program to stop fraudulent prescriptions before they reach the patient's hands.

. . . .

. . . [This] alert system . . . instantly captures data each time a physician sends an electronic prescription for a controlled substance and each time a pharmacist seeks to fill an opioid prescription.<sup>318</sup>

The White House has become aware of the need for this kind of system and is calling for "States [to] transition to a nationally interoperable [PDMP] network."<sup>319</sup> When prescribers and pharmacists do not have a full view of a patient's history with opiates, they can fuel addiction.<sup>320</sup> If they are

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311. *Id.*

312. *Id.*

313. *Id.*

314. White & Stember, *supra* note 306.

315. *Id.*

316. *Id.*

317. Act Effective July 1, 2018, ch. 2018-13, § 10(2)(a), 2018 Fla. Laws 1, 56 (codified in scattered sections of FLA. STAT.); *see also* White & Stember, *supra* note 306.

318. White & Stember, *supra* note 306.

319. *President Donald J. Trump's Initiative to Stop Opioid Abuse and Reduce Drug Supply and Demand*, WHITE HOUSE (Mar. 19, 2018), <http://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-initiative-stop-opioid-abuse-reduce-drug-supply-demand/>.

320. *See* White & Stember, *supra* note 306.

given the information at the right time, they can help put an end to an abuser's habit and save his or her life.<sup>321</sup>

#### VIII. CONCLUSION: WILL FLORIDA'S BILL BE EFFECTIVE?

The fact that young people are more prone to drug abuse is a *common misconception*.<sup>322</sup> On the contrary, forty-five to sixty-four-year-olds “account for 40% of all drug overdose deaths.”<sup>323</sup> A majority of those people were prescribed opioids from their doctors for pain.<sup>324</sup>

Considering that fact, the purpose of House Bill 21 is to limit the chance of drug addiction in its infancy.<sup>325</sup> Although the bill also provides for additional treatment opportunities and recovery support services, its focus is the three-day prescribing limit.<sup>326</sup> With the limit on prescription painkillers, the sources of the problem may be eliminated; however, it is difficult to tackle the issue of those who are currently in the grips of addiction.<sup>327</sup> Therefore, considering France's attack on its heroin epidemic, implementing cheaper treatment options could help those who are already struggling with addiction.<sup>328</sup>

On the other hand, since House Bill 477 was passed in October 2017, which charges drug dealers selling fentanyl with murder and trafficking, there has been a decline in drug overdoses.<sup>329</sup> Looking at a microcosm effect of the bill in Florida, “[t]he Manatee County Sheriff's Office has investigated 47 . . . overdoses in the first two months of 2018, compared to 172 . . . overdoses in the first two months of last year.”<sup>330</sup> Similarly, only 6 fatal overdoses occurred in the beginning of 2018 compared to 21 that occurred in the first two months of 2017.<sup>331</sup> Therefore, with the passage of these two bills—House Bill 21 and 477—the hope is that addiction and overdoses will continue to decline in Florida.<sup>332</sup> A history professor at the University of North Florida stated that the solution to the

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321. *Id.*

322. Hoban, *supra* note 1.

323. *Id.*

324. *Id.*

325. De Leon, *supra* note 18.

326. *Id.*

327. *Id.*

328. See Khazan, *supra* note 286.

329. See Act effective Oct. 1, 2017, ch. 2017-107, § 19, 2017 Fla. Laws 1, 1, 85; De Leon, *supra* note 18.

330. De Leon, *supra* note 18.

331. *Id.*

332. See *id.*; Act effective July 1, 2018, ch. 2018-13, § 1, 2018 Fla. Laws 1 (codified in scattered sections of FLA. STAT.); Ch. 2017-107, § 19, 2017 Fla. Laws at 1, 85.

opioid epidemic is to “make it more difficult and expensive to get supply . . . [and] make treatment on demand available to people.”<sup>333</sup> As the government becomes more involved and aware of the opioid epidemic, tangible measures are being taken to intervene and unravel this national health crisis that has affected the lives of millions.<sup>334</sup>

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333. Trickey, *supra* note 50.

334. See *President Donald J. Trump’s Initiative to Stop Opioid Abuse and Reduce Drug Supply and Demand*, *supra* note 319; Trickey, *supra* note 50.