



## policypoints

**Laws for Pain Relief** The JCAHO and Congress are developing new rules to make it easier for physicians to effectively relieve pain. But one bill before Congress also would prohibit physician-assisted suicide.

BY JEFF ATKINSON



Treatment of pain is receiving increased attention from the medical profession and

from Congress. A common theme articulated by both medical organizations and lawmakers is that not enough is being done to relieve patients' pain, especially chronic pain.

Proposed solutions to the problem include development and dissemination of guidelines for pain management along with programs to educate physicians, nurses, patients, and patients' families. Members of Congress also would like to remove potential

barriers to effective pain management by modifying laws of legal liability and perhaps adjusting the Medicare payment system to insure appropriate reimbursement for pain management.

### JCAHO standards

This year and in 2001, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) will publish new standards regarding pain man-

agement. The JCAHO will use these standards to score for compliance beginning in 2001. The standards apply to many health-care settings, including hospitals, ambulatory-care centers, health networks, home care, and long-term care.

The standards include a provision that "Patients have the right to appropriate assessment and management of pain." The standards also provide that "Pain is considered the fifth

vital sign" and that the intensity of pain should be recorded on a patient's record along with temperature, pulse, respiration, and blood pressure.

To implement the policy regarding assessment of pain, patients should be asked not only if they presently feel pain, but also if they have had pain in the last several weeks or months. Follow-up inquiries would include questions about the pain's location, duration, intensity, and quality (including patterns of radiation), as well as factors that aggravate or alleviate the pain and the effect of pain on the patient's day-to-day life.

The Joint Commission's standards are available on the Internet at: [www.jcaho.org/](http://www.jcaho.org/) on a

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pull-down menu called “Top Spots.”

#### **Congressional action**

Meanwhile, on Capitol Hill, at least two competing bills are under consideration. In October 1999, the House of Representatives passed the “Pain Relief Promotion Act” (H.R. 2260). The bill was introduced by Rep. Henry Hyde (R. IL) and 165 cosponsors. The bill, which is now awaiting action in the Senate, seeks to accomplish two things: (1) to make it easier for patients to obtain needed pain relief and (2) to override referenda in the State of Oregon which authorize physician-assisted suicide.

Regarding the goal of relieving pain, the bill provides, “alleviating pain or discomfort in the usual course of professional practice is a legitimate medical purpose for the dispensing . . . of a controlled substance . . . even if the use of such a substance may increase the risk of death.”

This provision of H.R. 2260 basically

turns into law the medical-ethical principle of “double-effect.” Under the principle of double-effect, it is permissible to provide medication for pain relief, even if the medication may hasten the patient’s death. Thus, for example, a patient with advanced cancer may be given increasing doses of morphine to relieve pain, even though, at some point, the morphine may cause cessation of respiration.

Traditional principles of common law (laws decided by courts instead of statutes) and medical-ethical principles already provide protection to physicians whose actions hastened a patient’s death as long as the physician’s goal was to relieve pain. H.R. 2260, however, if enacted, will provide nationwide statutory protection from liability for physicians in such circumstances.

In addition to providing protection for physicians, H.R.2260 would allocate \$5 million to “[c]ollect and disseminate protocols and evidence-based practices re-

garding palliative care, with priority given to pain management for terminally ill patients . . . .”

#### **Banning assisted suicide**

The second (and probably primary) purpose of the Pain Relief Promotion Act is to overturn or block the effectiveness of an Oregon law permitting assisted suicide. Voters in Oregon have twice approved referenda legalizing physician-assisted suicide. In 1998, Attorney General Janet Reno ruled that administering controlled substances for the purpose of causing death was to be considered part of the ordinary practice of medicine in Oregon, and thus exempt from federal jurisdiction under the federal Controlled Substances Act and the Drug Enforcement Administration.

The Oregon Health Division reported that in 1998, the first full year under the state’s physician-assisted suicide law, twenty

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### A Doctor’s Testimony

When the House of Representatives conducted hearings on the Pain Relief Promotion Act (H.R. 2260), it heard from many witnesses, including Walter R. Hunter, MD, of VistaCare Hospice. The majority report cited Dr. Hunter’s testimony with approval for the proposition that it is appropriate to utilize controlled substances to ease pain, even if the result might be death of the patient. The majority report also said that controlled substances should not be used to deliberately cause death. The report stated: “Causing a patient’s death requires a sudden massive overdose of potentially dangerous drugs. Pain control involves carefully adjusting dosage until it achieves relief of pain with a minimum of side-effects.” Here is Dr. Hunter’s account of his care of an AIDS patient:

On a Monday morning the hospice for whom I worked received a phone call from his family that he was having difficulty breathing. His nurse and I made a house call. When we entered the room we could hear his laborious and moist respirations across the room. His respiratory rate was 44 and he was unconscious. We immediately set to work. I gave him 40 mg of Lasix (furosemide) intravenously. There was no effect. I then gave him 10 mg of morphine intravenously. There was no effect after several minutes. I repeated the dose of 10 mg of morphine and waited several minutes.

Again, there was no effect. I gave 5 mg of morphine. There was still no effect. I then gave 5 mg of Valium (diazepam) in an attempt to sedate him and ease the work of breathing. There was no effect. I repeated the Valium dose and there was still no effect. I gave 5 mg of morphine, waited, saw no effect and gave another 10 mg of morphine. After a few minutes, his respirations decreased to about 20. This was a reasonable goal. However, instead of stabilizing at 20, they continued to diminish and he stopped breathing several minutes later. ■

ty-three individuals received lethal substances pursuant to the Act and fifteen actually used the substances to cause their deaths. Thirteen of those individuals had cancer; one had a chronic lung condition; and one had congestive heart failure.

Representative Hyde and other Congressmen did not like this result and sought to block the effect of the Oregon law. They would do this by having a federal law declare “the Attorney General shall give no force and effect to State law authorizing or permitting assisted suicide or euthanasia.” The law, if passed, would override Attorney General Reno’s decision and would allow criminal prosecution of physicians and revocation of licenses to prescribe controlled substances if physicians participated in assisted suicide or euthanasia.

The bill drew support from the Catholic Church as well as from the American Medical Association and the National Hospice Organization. Speaking for the National Conference of Catholic Bishops, Richard Doerflinger stated: “The important factor here is the agent’s intent. . . . The goal of pain control is a patient who is relieved of pain. The goal of assisted suicide is a world that is relieved of one more patient.”

Opponents of the Pain Relief Promotion Act favor autonomy for patients and do not want the federal government to interfere with the states’ ability to regulate the practice of medicine.

A dissenting House report to the proposed act stated, “This legislation represents an unnecessary intrusion into the sensitive relationship between terminally ill patients and their physicians and would empower Federal law enforcement agents to second-guess the considered medical judgment of physicians, pharmacists and patients.” The dissenters also noted that Oregon’s Death with Dignity Act drew

support from 65 percent of Oregon voters and 66 percent of Oregon physicians.

#### Alternate bill

Another bill before Congress is the Conquering Pain Act, introduced by Sen. Ron Wyden ( D. OR ) and eight cosponsors (S. 941; the companion bill in the House is H.R. 2188). This bill also seeks to promote pain relief, but does not attempt to override the Oregon assisted suicide law.

The Conquering Pain Act would direct implementation of a variety of measures, including:

- Establishment of a Web site by the Secretary of Health and Human Services to provide information to individuals and health-care providers regarding guidelines for treatment of pain;
- Establishment of alternate means for health-care facilities that do not have Internet access (particularly in rural areas) to obtain practice guideline information twenty-four hours per day, seven days per week;
- Funding of \$18 million or more for education projects and family-support networks to improve pain management, particularly at end of life;
- A report from the Surgeon General to be prepared by the end of the year identifying populations that may be underserved for pain management services and identification of barriers to such services;
- A report from the Medicare Payment Advisory Commission (MedPac) regarding barriers within the Medicare system to effective pain management; and
- Creation of an Advisory Committee on Pain Management.

Pain assessment and management have improved significantly in recent decades, but further improvement is needed. New rules coming out of the Joint Commission on Accreditation of Health Care Organizations and Congress will help alleviate the problem, although

some members of Congress will use the banner of pain relief to pursue other agendas at the same time. ■

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