SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 159

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO HEALTH CARE; MANDATING PROCEDURES RELATING TO THE PRESCRIBING AND DISPENSING OF CERTAIN PRESCRIPTIONS FOR OPIOID MEDICATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Drug, Device and Cosmetic Act is enacted to read:

"[NEW MATERIAL] OPIOID MEDICATION--CONSENT REQUIRED--PATIENT EDUCATION--SUPPLY LIMITS--LABELING--PROTOCOLS FOR DISPENSING CERTAIN PRESCRIBED OPIOID MEDICATIONS.--

A. Before writing a prescription for any opioid medication for the first time to a patient, a practitioner shall obtain written consent from:

(1) the patient for whom the practitioner wishes to prescribe the opioid medication, if the patient is an

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adult;

(2) the patient's parent, guardian or legal representative, if the patient is a minor;

(3) the patient's guardian or legal representative, if the patient is an adult who has been judged to be incompetent to provide informed consent; or

(4) the patient's surrogate appointed pursuant to Section 24-7A-5 NMSA 1978.

B. In the process of obtaining written consent pursuant to Subsection A of this section, a practitioner shall discuss with the patient or the patient's parent, legal guardian or legal representative the risks and benefits of using opioid medication and shall ensure that the patient or the patient's parent, legal guardian or legal representative is provided with written materials containing current, factual information on the risks associated with using opioids and on the safe use of opioids.

C. If a practitioner subsequently writes a prescription for a different opioid medication for the same patient, the practitioner shall obtain written consent for the new opioid medication as set forth in Subsections A and B of this section. A practitioner is not required to obtain written consent from a patient if the practitioner writes a prescription for an opioid medication that the practitioner has previously prescribed to that patient.

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D. Notwithstanding any other provision of law, consent and counseling are not required pursuant to Subsections A, B and C of this section when health care decisions are made pursuant to the provisions of Sections 24-10-1 through 24-10-4 NMSA 1978.

E. A prescription for an opioid medication shall not be refilled.

F. For an opioid medication prescription issued by a practitioner licensed under the Dental Health Care Act, excluding an opioid medication prescription issued for oral or maxillofacial surgery, a prescriber shall not prescribe and a dispenser shall not fill the prescription in an amount that exceeds a three-day supply. A practitioner issuing an opioid medication prescription for oral or maxillofacial surgery shall adhere to the opioid medication prescribing limits set forth in Subsection G of this section.

G. For an opioid medication prescription issued by a practitioner, including a prescription for oral or maxillofacial surgery and otherwise excluding a practitioner licensed under the Dental Health Care Act, a prescriber shall indicate dosage instructions on the prescription. A prescriber shall not prescribe and a dispenser shall not fill the prescription in an amount that exceeds the limits set forth in this subsection:

(1) a thirty-day supply, where the patient has

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been diagnosed with cancer pain, chronic pain or is a hospice patient, except in the following circumstance, which relates only to opioid medications that are Schedule II controlled substances that are prescribed by an individual practitioner:

(a) the practitioner may issue multiple prescriptions for the same opioid medication at one time;

(b) no single prescription may exceed a thirty-day supply;

(c) the total days of medication from multiple prescriptions issued at one time shall not exceed ninety days; and

(d) the prescriptions may only be filled one at a time, with no less than a twenty-one-day interval between fills for the same opioid medication;

(2) a seven-day supply, where the patient has been diagnosed with acute pain or cough, except as provided in Paragraph (3) of this subsection; and

(3) a thirty-day supply, where the patient has not been diagnosed with cancer pain or chronic pain and:

(a) twenty-eight days have passed after the prescriber has issued an initial prescription for opioid medication to treat a specified indication or indications; and

(b) the prescriber reasonably believes that the patient's pain situation will become chronic. In this case, the prescriber shall specify the underlying diagnosis

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believed to be the cause of the pain.

H. A practitioner when issuing a prescription for an opioid medication shall include in the prescription whether the indication for which it has been prescribed is for acute pain, chronic pain, cancer pain, cough, diarrhea, opioid replacement therapy or hospice care. When the indication is chronic pain, the underlying diagnosis believed to be the cause of the chronic pain shall be specified.

I. A dispenser of an opioid medication shall include the indication for which the opioid medication was prescribed with the medication's directions for use on the dispensing container label as required pursuant to Subsection B of Section 26-1-16 NMSA 1978. The indication shall state whether the opioid medication has been prescribed for acute pain, chronic pain, cancer pain, cough, diarrhea, opioid replacement therapy or hospice care. When the indication is chronic pain, the underlying diagnosis believed to be the cause of the chronic pain shall be specified.

J. When a patient who is a minor seeks to fill a prescription for an opioid medication by presenting the prescription to a dispenser, or when that patient seeks to obtain a filled opioid medication prescription from a dispenser, the minor patient shall be accompanied by the patient's parent, guardian or legal representative.

K. A practitioner shall retain a copy of the

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written consent obtained pursuant to Subsection A of this section for a period of time that the board shall designate by rule.

L. A practitioner who treats a patient with an opioid medication for at least one month shall review a board of pharmacy prescription drug monitoring report for that patient as defined by the licensing board with authority over the practitioner. The practitioner's licensing board operating pursuant to Chapter 61 NMSA 1978 shall enforce the provisions of this subsection.

M. For the purposes of this section:

(1) "acute pain" means the normal, predicted physiological and generally time-limited response to a noxious chemical, thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease;

(2) "adequate directions for use" means directions pursuant to which a layperson can use a drug or device safely and for the purposes for which it is intended;

(3) "adult" means an individual who is:

(a) over eighteen years of age; or

(b) under eighteen and emancipated;

(4) "chronic pain" means pain that persists after reasonable medical efforts have been made to relieve the pain or its cause that continues, either continuously or episodically, for longer than three consecutive months.

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"Chronic pain" does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition;

(5) "dispenser" means a person who delivers an opioid medication to the opioid medication's ultimate user, but "dispenser" does not mean:

(a) a licensed hospital pharmacy that distributes opioid medications for the purpose of inpatient hospital care;

(b) a practitioner or other authorized person who directly administers an opioid medication to a patient;

(c) a wholesale distributor of a Schedule II, III, IV or V controlled substance; or

(d) a health facility that the department of health licenses as a clinic, urgent care or emergency facility that dispenses no more than four dosage units to an individual patient within a twenty-four-hour period;

(6) "emancipated" means the status of being between sixteen years of age and eighteen years of age and:

(a) married;

(b) on active duty in the armed forces; or

(c) having been declared by court order to be emancipated;

(7) "minor" means an individual under the age of eighteen who is not emancipated;

(8) "opioid medication" means a substance that:

(a) binds to and stimulates the opioid receptors on the surface of the cell;

(b) is specifically indicated to treat acute pain, chronic pain or cancer pain, cough suppression or diarrhea, or for opioid replacement therapy or hospice care;

(c) is a dangerous drug; and

(d) is a Schedule II, III, IV or V controlled substance included in the Controlled Substances Act; and

(9) "Schedule II controlled substance" means a controlled substance listed in Schedule II of the Controlled Substances Act."

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