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HOUSE BILL 624

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Terry H. McMillan and Daniel Ivey-Soto

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTIONS OF THE PAIN RELIEF
ACT TO RENAME THE PRESCRIPTION DRUG MISUSE AND OVERDOSE
PREVENTION AND PAIN MANAGEMENT ADVISORY COUNCIL AS THE
"OVERDOSE PREVENTION AND PAIN MANAGEMENT ADVISORY COUNCIL";
ESTABLISHING REQUIREMENTS FOR PAIN MANAGEMENT PRESCRIBING,
DISPENSING AND ADMINISTRATION.

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

SECTION 1. Section 24-2D-2 NMSA 1978 (being Laws 1999,
Chapter 126, Section 2, as amended) is amended to read:

"24-2D-2. DEFINITIONS.--As used in the Pain Relief Act:

A. "accepted guideline" means the most current
clinical pain management guideline developed by the American
geriatrics society or the American pain society or a clinical
pain management guideline based on evidence and expert opinion

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1 that has been accepted by the New Mexico medical board;

2 B. "acute pain" means the normal, predicted
3 physiological response to a noxious chemical or thermal or
4 mechanical stimulus, typically associated with invasive
5 procedures, trauma or disease and generally time-limited;

6 C. "board" means the licensing board of a health
7 care provider;

8 D. "chronic pain" means pain that persists after
9 reasonable medical efforts have been made to relieve the pain
10 or its cause and that continues, either continuously or
11 episodically, for longer than three consecutive months.

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

16 E. "clinical expert" means a person who by reason
17 of specialized education or substantial relevant experience in
18 pain management has knowledge regarding current standards,
19 practices and guidelines;

20 F. "disciplinary action" means any formal action
21 taken by a board against a health care provider, upon a finding
22 of probable cause that the health care provider has engaged in
23 conduct that violates the board's practice act;

24 G. "health care provider" means a person who is
25 licensed or otherwise authorized by law to provide health care

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1 in the ordinary course of business or practice of the person's
2 profession and who has prescriptive authority within the limits
3 of the person's license;

4 H. "pain" means acute and chronic pain; [~~and~~]

5 I. "prescription drug monitoring program" means the
6 electronic centralized system that the board of pharmacy
7 operates to collect, monitor and analyze data related to the
8 prescribing, dispensing and administration of controlled
9 substances for the purposes of education, research, enforcement
10 and abuse prevention; and

11 [~~F.~~] J. "therapeutic purpose" means the use of
12 pharmaceutical and non-pharmaceutical medical treatment that
13 conforms substantially to accepted guidelines for pain
14 management."

15 SECTION 2. Section 24-2D-3 NMSA 1978 (being Laws 1999,
16 Chapter 126, Section 3, as amended) is amended to read:

17 "24-2D-3. GUIDELINES--DISCIPLINARY ACTION--EVIDENTIARY
18 REQUIREMENTS.--

19 A. A health care provider who prescribes, dispenses
20 or administers medical treatment for the purpose of relieving
21 pain and who can demonstrate by reference to an accepted
22 guideline that the provider's practice substantially complies
23 with that guideline and with the standards of practice
24 identified in Section 24-2D-4 NMSA 1978 shall not be
25 disciplined pursuant to board action or criminal prosecution,

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1 unless the showing of substantial compliance with an accepted
2 guideline by the health care provider is rebutted by clinical
3 expert testimony. If no currently accepted guidelines are
4 available, then rules issued by the board may serve the
5 function of such guidelines for purposes of the Pain Relief
6 Act. The board rules shall conform to the intent of that act.
7 Guidelines established primarily for purposes of coverage,
8 payment or reimbursement do not qualify as an "accepted
9 guideline" when offered to limit treatment options otherwise
10 covered within the Pain Relief Act.

11 B. In the event that a disciplinary action or
12 criminal prosecution is pursued, the board or prosecutor shall
13 produce clinical expert testimony supporting the finding or
14 charge of violation of disciplinary standards or other legal
15 requirements on the part of the health care provider. A
16 showing of substantial compliance with an accepted guideline
17 shall only be rebutted by clinical expert testimony.

18 C. The provisions of this section apply to health
19 care providers in the treatment of pain, regardless of a
20 patient's prior or current chemical dependency or addiction.
21 Each board [~~shall adopt rules establishing~~], in consultation
22 with the overdose prevention and pain management advisory
23 council, shall collaborate with one another to establish by
24 rule, before July 1, 2014, a minimum set of standards and
25 procedures for the application of the Pain Relief Act,

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1 including:

2 (1) standards for pain management for patients
3 with substance use disorders;

4 (2) standards for prescribing, dispensing or
5 administering controlled substances to which a health care
6 provider shall adhere unless the health care provider has first
7 consulted with a health care provider specializing in pain
8 management;

9 (3) standards for the frequency and
10 circumstances in which a health care provider shall access the
11 state prescription drug monitoring program;

12 (4) guidance on tracking the use of controlled
13 substances, particularly in emergency departments;

14 (5) specific criteria and circumstances that
15 warrant board review of a health care provider's pain
16 management prescribing, dispensing or administration practices,
17 including:

18 (a) identification of anomalous or possibly
19 noncompliant pain management prescribing, dispensing or
20 administration practices; and

21 (b) procedures for board intervention to
22 provide education to a health care provider or make
23 recommendations for changes to a health care provider's pain
24 management practices;

25 (6) rules that set forth procedures for regular

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1 review of health care provider pain management prescribing,
2 dispensing and administration, including specific criteria
3 outlining the appropriate process for reviewing a health care
4 provider; and

5 (7) guidelines for boards to report annually to
6 the overdose prevention and pain management advisory council on:

7 (a) board activities to track, provide
8 education relating to and recommend changes in pain management
9 prescribing, dispensing and administration practices; and

10 (b) changes in pain management prescribing,
11 dispensing and administration practices resulting from the boards'
12 activities in tracking, providing education and recommending
13 changes to those practices.

14 D. Rules that the boards promulgate pursuant to
15 Subsection C of this section shall not apply to:

16 (1) the provision of palliative, hospice or other
17 end-of-life care; or

18 (2) the management of acute pain caused by an
19 injury or a surgical procedure.

20 E. Each board shall, in consultation with the overdose
21 prevention and pain management advisory council, adopt and
22 promulgate a uniform set of rules to establish requirements
23 specific to providing pain management to patients who are
24 controlled-substance dependent and who experience acute pain that
25 is caused by an injury or surgical procedure.

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1 ~~[D-]~~ F. In an action brought by a board against a
2 health care provider based on treatment of a patient for pain, the
3 board shall consider the totality of the circumstances and shall
4 not use as the sole basis of the action:

- 5 (1) a patient's age;
- 6 (2) a patient's diagnosis;
- 7 (3) a patient's prognosis;
- 8 (4) a patient's history of drug abuse;
- 9 (5) the absence of consultation with a pain
10 specialist; or
- 11 (6) the quantity of medication prescribed or
12 dispensed."

13 **SECTION 3.** Section 24-2D-5.2 NMSA 1978 (being Laws 2005,
14 Chapter 140, Section 3, as amended) is amended to read:

15 "24-2D-5.2. [~~PRESCRIPTION DRUG MISUSE AND~~] OVERDOSE
16 PREVENTION AND PAIN MANAGEMENT ADVISORY COUNCIL CREATED--
17 DUTIES.--

18 A. The "~~[prescription drug misuse and]~~ overdose
19 prevention and pain management advisory council" is created and
20 shall be administratively attached to the department of health.
21 Members of the council shall be appointed by the governor to
22 consist of one representative each from the department of health,
23 the New Mexico medical board, the board of nursing, the board of
24 pharmacy, the board of osteopathic medical examiners, [~~the board~~
25 ~~of acupuncture and oriental medicine]~~ the New Mexico board of

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1 dental health care, the [~~board of chiropractic examiners~~] board of
2 podiatry, the board of optometry, the university of New Mexico
3 health sciences center, a statewide medical association, a
4 statewide association of pharmacists, a statewide association of
5 nurse practitioners, a statewide association of nurse-midwives, a
6 statewide association of certified registered nurse anesthetists
7 and a statewide association of osteopathic physicians; one person
8 who is a pain management specialist; one person who is a consumer
9 health care advocate; and one person who has no direct ties or
10 pecuniary interest in the health care field.

11 B. The council shall meet at least quarterly to review
12 the current status of prescription drug misuse and overdose
13 prevention and current pain management practices in New Mexico and
14 national prescription drug misuse and overdose prevention and pain
15 management standards and educational efforts for both consumers
16 and professionals. The council shall also recommend pain
17 management and clinical guidelines. Members who are not public
18 employees shall receive per diem and mileage as provided in the
19 Per Diem and Mileage Act. Public employee members shall receive
20 mileage from their respective employers for attendance at council
21 meetings."