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SENATE BILL 215

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

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO PAIN MANAGEMENT; AMENDING THE PAIN RELIEF ACT;
CHANGING THE NAME AND COMPOSITION OF THE PAIN MANAGEMENT
ADVISORY COUNCIL; REQUIRING CONTINUING EDUCATION FOR NON-CANCER
PAIN MANAGEMENT.

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 a care or practice
guideline for pain management developed by [~~a national joint~~
~~commission on accreditation of health care organizations]~~ the
American pain society, [~~an~~] the American geriatrics society or
the United States agency for healthcare research and quality.
[~~a national cancer pain initiative or~~] "Accepted guideline"

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1 also means a care or practice guideline for pain management
2 from any other nationally recognized clinical or professional
3 association or from a health care specialty society or
4 government-sponsored agency that has developed practice or care
5 guidelines based on original research or on review of existing
6 research and expert opinion whose guidelines have been accepted
7 by the New Mexico medical board [~~and by other boards of health~~
8 ~~care providers with prescriptive authority~~];

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

13 [~~B.~~] C. "board" means the licensing board of a
14 health care provider;

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

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

23 [~~E.~~] E. "clinical expert" means a person who by
24 reason of specialized education or substantial relevant
25 experience in pain management has knowledge regarding current

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1 standards, practices and guidelines;

2 ~~[D.]~~ F. "disciplinary action" means ~~[a]~~ any formal
3 action taken by a board against a health care provider, upon a
4 finding of probable cause that the health care provider has
5 engaged in conduct that violates the ~~[provider's respective]~~
6 board's practice act;

7 ~~[E.]~~ G. "health care provider" means a person
8 licensed or otherwise authorized by law to provide health care
9 in the ordinary course of business or practice of the person's
10 profession and ~~[to have]~~ who has prescriptive authority within
11 the limits of the person's license;

12 ~~[F.]~~ H. "pain" means ~~[a condition of bodily~~
13 ~~sensation of serious physical discomfort that requires the~~
14 ~~services of a health care provider to alleviate, including~~
15 ~~discomfort that is persistent and chronic in duration]~~ acute
16 and chronic pain; and

17 ~~[G.]~~ I. "therapeutic purpose" means the use of
18 pharmaceutical and non-pharmaceutical medical treatment that
19 conforms substantially to accepted guidelines for pain
20 management."

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

23 "24-2D-3. DISCIPLINARY ACTION--EVIDENTIARY
24 REQUIREMENTS.--

25 A. A health care provider who prescribes, dispenses
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1 or administers medical treatment for the purpose of relieving
2 pain and who can demonstrate by reference to an accepted
3 guideline that the provider's practice substantially complies
4 with that guideline and with the standards of practice
5 identified in Section 24-2D-4 NMSA 1978 shall not be
6 disciplined pursuant to board action or criminal prosecution,
7 unless the showing of substantial compliance with an accepted
8 guideline by the health care provider is rebutted by clinical
9 expert testimony. If no currently accepted guidelines are
10 available, then rules issued by the board may serve the
11 function of such guidelines for purposes of the Pain Relief
12 Act. The board rules shall conform to the intent of that act.
13 Guidelines established primarily for purposes of coverage,
14 payment or reimbursement do not qualify as an "accepted
15 guideline" when offered to limit treatment options otherwise
16 covered within the Pain Relief Act.

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

24 C. The provisions of this section apply to health
25 care providers in the treatment of pain, regardless of a

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1 patient's prior or current chemical dependency or addiction.
2 Each board shall adopt rules establishing standards and
3 procedures for the application of the Pain Relief Act,
4 including ~~[the care and treatment of chemically dependent~~
5 ~~individuals]~~ pain management for patients with substance use
6 disorders.

7 D. In an action brought by a board against a health
8 care provider based on treatment of a patient for pain, the
9 board shall consider the totality of the circumstances and
10 shall not use as the sole basis of the action:

- 11 (1) a patient's age;
12 (2) a patient's diagnosis;
13 (3) a patient's prognosis;
14 (4) a patient's history of drug abuse;
15 (5) the absence of consultation with a pain
16 specialist; or
17 (6) the quantity of medication prescribed or
18 dispensed."

19 SECTION 3. Section 24-2D-5 NMSA 1978 (being Laws 1999,
20 Chapter 126, Section 5) is amended to read:

21 "24-2D-5. NOTIFICATION.--The board shall ~~[make reasonable~~
22 ~~efforts to]~~ notify the following persons of the Pain Relief Act
23 and accepted guidelines:

24 A. health care providers under its jurisdiction ~~[of~~
25 ~~the existence of the Pain Relief Act and inform any]; and~~

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1 B. a health care provider being investigated by the
2 board in relation to the provider's pain management practices
3 [~~in the management of pain of the existence of that act~~]."

4 SECTION 4. Section 24-2D-5.1 NMSA 1978 (being Laws 2005,
5 Chapter 140, Section 4) is amended to read:

6 "24-2D-5.1. PAIN MANAGEMENT CONTINUING EDUCATION.--A
7 board shall [~~encourage~~] require non-cancer pain management
8 continuing education as determined by its rules for [~~all~~]
9 health care providers [~~who have prescriptive authority and who~~
10 ~~treat patients with pain~~] under the board's jurisdiction who
11 hold a federal drug enforcement administration registration and
12 licensure to prescribe opioids."

13 SECTION 5. Section 24-2D-5.2 NMSA 1978 (being Laws 2005,
14 Chapter 140, Section 3) 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
23 health, the New Mexico medical board, the board of nursing, the
24 board of pharmacy, the board of osteopathic medical examiners,
25 the board of acupuncture and oriental medicine, the New Mexico

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

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