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SENATE BILL 641

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

INTRODUCED BY

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

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~~] shall, before July  
22 1, 2014, in consultation with the overdose prevention and pain  
23 management advisory council, collaborate with one another to  
24 establish by rule a minimum set of standards and procedures for  
25 the application of the Pain Relief Act, including:

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

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

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

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

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

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

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

24                   (6) rules that set forth procedures for regular  
25 review of health care provider pain management prescribing,

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1 dispensing and administration, including specific criteria  
2 outlining the appropriate process for reviewing a health care  
3 provider; and

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

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

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

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

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

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

19 E. Each board shall, before July 1, 2014, in  
20 consultation with the overdose prevention and pain management  
21 advisory council, adopt and promulgate a uniform set of rules to  
22 establish requirements specific to providing pain management to  
23 patients who are controlled-substance dependent and who experience  
24 acute pain that is caused by an injury or surgical procedure.

25 ~~[D-]~~ F. In an action brought by a board against a

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1 health care provider based on treatment of a patient for pain, the  
2 board shall consider the totality of the circumstances and shall  
3 not use as the sole basis of the action:

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

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

14 "24-2D-5.2. [~~PRESCRIPTION DRUG MISUSE AND~~] OVERDOSE  
15 PREVENTION AND PAIN MANAGEMENT ADVISORY COUNCIL CREATED--  
16 DUTIES.--

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

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

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