

CHAPTER 24

Health and Safety

ARTICLE 2D

Pain Relief

24-2D-1. Short title.

Chapter 24, Article 2D NMSA 1978 may be cited as the "Pain Relief Act".

History: Laws 1999, ch. 126, § 1; 2019, ch. 94, § 1.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, changed "This act" to "Chapter 24, Article 2D NMSA 1978."

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 that has been accepted by the New Mexico medical board;

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

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

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

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

F. "disciplinary action" means any formal action taken by a board against a health care provider, upon a finding of probable cause that the health care provider has

engaged in conduct that violates the board's practice act;

G. "health care provider" means a person who is licensed or otherwise authorized by law to provide health care in the ordinary course of business or practice of the person's profession and who has prescriptive authority within the limits of the person's license;

H. "opioid analgesic" means buprenorphine, butorphanol, codeine, hydrocodone, hydromorphone, levorphanol, meperidine, methadone, morphine, nalbuphine, oxycodone, oxymorphone, pentazocine and propoxyphene as well as their brand names, isomers and combinations;

I. "opioid antagonist" means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body, including naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses;

J. "pain" means acute and chronic pain; and

K. "therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

History: Laws 1999, ch. 126, § 2; 2005, ch. 140, § 1; 2012, ch. 41, § 1; 2019, ch. 94, § 2.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, defined "opioid analgesic" and "opioid antagonist" as used in the Pain Relief Act; and added new Subsections H and I and redesignated former Subsections H and I as Subsections J and K, respectively.

The 2012 amendment, effective May 16, 2012, redefined "accepted guideline"; defined "acute pain" and "chronic pain"; redefined "pain"; in Subsection A, after "means", deleted the former definition, which defined "accepted guideline" as a practice guideline developed by a national organization, society or governmental agency and added the current language; added a new Subsection B; relettered former Subsection B as new Subsection C; added a new Subsection D and relettered the succeeding subsections accordingly; in Subsection F, after "violates the", deleted "provider's respective"; and in Subsection H, after the word "means", deleted the former definition, which defined "pain" as serious bodily discomfort that required the services of a health care provider to alleviate and added the existing language.

The 2005 amendment, effective June 17, 2005, defined "accepted guideline" in Subsection A to include a guideline developed by a national joint commission on

accreditation of health care organizations and other boards of health care providers with prescriptive authority; defined "disciplinary action" in Subsection D, to mean a violation of the health care provider's respective board's practice act; deleted the definition of "intractable pain" in former Subsection F and added a definition of "pain" in subsection to mean a condition of bodily sensation of serious physical discomfort that requires health care provider service to alleviate.

24-2D-3. Disciplinary action; evidentiary requirements.

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

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

C. The provisions of this section apply to health care providers in the treatment of pain, regardless of a patient's prior or current chemical dependency or addiction. Each board shall adopt rules establishing standards and procedures for the application of the Pain Relief Act, including pain management for patients with substance use disorders.

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

- (1) a patient's age;
- (2) a patient's diagnosis;
- (3) a patient's prognosis;
- (4) a patient's history of drug abuse;
- (5) the absence of consultation with a pain specialist; or

- (6) the quantity of medication prescribed or dispensed.

History: Laws 1999, ch. 126, § 3; 2005, ch. 140, § 2; 2012, ch. 41, § 2.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, required the boards to adopt standards and procedures for pain management for patients with substance use disorders and in Subsection C, in the second sentence, after "Pain Relief Act, including", deleted "the care and treatment of chemically dependent individuals" and added the remainder of the sentence.

The 2005 amendment, effective June 17, 2005, added Subsection D to provide that in an action brought by the board against a health care provider based on treatment of a patient for pain, the board shall not base its decision solely on the factors listed in Subsection D(1) through 6).

24-2D-4. Disciplinary action; prohibitions.

Nothing in the Pain Relief Act shall prohibit discipline or prosecution of a health care provider for:

A. failing to maintain complete, accurate and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient and the treatment plan for the patient;

B. writing false or fictitious prescriptions for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or Sections 26-1-23 and 30-31-18 NMSA 1978;

C. prescribing, administering or dispensing pharmaceuticals in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or Sections 26-1-23 and 30-31-18 NMSA 1978; or

D. diverting medications prescribed for a patient to the provider's personal use or to other persons.

History: Laws 1999, ch. 126, § 4.

ANNOTATIONS

Cross references. — For the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, see 21 U.S.C. § 801 et seq.

D-5. Notification.

The board shall notify the following persons of the Pain Relief Act and accepted guidelines:

A. health care providers under its jurisdiction; and

B. a health care provider being investigated by the board in relation to the provider's pain management practices.

History: Laws 1999, ch. 126, § 5; 2012, ch. 41, § 3.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, provided for notice of the act and accepted guidelines; in the introductory sentence, after "The board shall", deleted "make reasonable efforts to" and after "notify", added "the following persons of the Pain Relief Act and accepted guidelines"; in Subsection A, after "its jurisdiction", deleted "of the existence of the Pain Relief Act and inform any" and added "and"; and in Subsection B, after "provider", added "being", after "investigated", added "by the board", after "provider's", added "pain management" and after "practices", deleted "in the management of pain of the existence of the act".

24-2D-5.1. Pain management continuing education.

A board shall require non-cancer pain management continuing education as determined by its rules for health care providers under the board's jurisdiction who hold a federal drug enforcement administration registration and licensure to prescribe opioids.

History: Laws 2005, ch. 140, § 4; 2012, ch. 41, § 4.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, required non-cancer pain management continuing education and after "A board shall", deleted "encourage" and added "require non-cancer", after "continuing education", added "as determined by its rules", after "by its rules for", deleted "all", after "health care providers", deleted "who have prescriptive authority and who treat patients with pain" and added the remainder of the sentence.

D-5.2. Overdose prevention and pain management advisory council created; duties.

A. The "overdose prevention and pain management advisory council" is created and shall be administratively attached to the department of health. Members of the council shall be appointed by the governor to consist of one representative each from the

department of health, the human services department, the department of public safety, the New Mexico medical board, the board of nursing, the board of pharmacy, the board of osteopathic medicine, the board of acupuncture and oriental medicine, the New Mexico board of dental health care, the chiropractic board, the university of New Mexico health sciences center, a harm reduction organization, a third-party payer, a statewide medical association, a statewide association of pharmacists, a statewide association of nurse practitioners, a statewide association of certified registered nurse anesthetists and a statewide association of osteopathic physicians; one person who is a pain management specialist; one person who is an addiction specialist; one person who is a consumer health care advocate; and one person who has no direct ties or pecuniary interest in the health care field.

B. The council shall meet at least quarterly to review the current status of overdose prevention and current pain management practices in New Mexico and national overdose prevention and pain management standards and educational efforts for both consumers and professionals. The council shall also make recommendations regarding overdose prevention and pain management practices. The council may create subcommittees as needed. Members who are not public employees shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. Public employee members shall receive mileage from their respective employers for attendance at council meetings.

History: Laws 2005, ch. 140, § 3; 2012, ch. 41, § 5; 2018, ch. 12, § 1.

ANNOTATIONS

The 2018 amendment, effective May 16, 2018, revised the name of the overdose prevention and pain management advisory council, added representatives of certain state agencies, organizations and specialties to the advisory council's membership, and clarified the duties of the advisory council; in the catchline, deleted "Prescription drug misuse and"; in Subsection A, after "The", deleted "prescription drug misuse and", after "the department of health", added "the human services department, the department of public safety", after "board of osteopathic", deleted "medical examiners" and added "medicine", after "dental health care, the", deleted "board of", after "chiropractic", deleted "examiners" and added "board", after "health sciences center", added "a harm reduction organization, a third-party payer", and after "pain management specialist", added "one person who is an addiction specialist"; and in Subsection B, after "current status of", deleted "prescription drug misuse and", after "New Mexico and national", deleted "prescription drug misuse and", and after "The council shall also", deleted "recommend pain management and clinical guidelines" and added "make recommendations regarding overdose prevention and pain management practices. The council may create subcommittees as needed".

The 2012 amendment, effective May 16, 2012, changed the name and composition of the pain management advisory council; in the title added "Prescription drug misuse and overdose prevention and"; in Subsection A, in the first sentence, after "The", added "prescription drug misuse and overdose prevention and"; in the second sentence, after

"one representative each from the" added "department of health, the"; after "oriental medicine", added "the New Mexico board of dental health care, the board of chiropractic examiners"; after "osteopathic physicians", added "one person who is a pain management specialist"; and after "health care advocate; and", deleted "three persons" and added "one person"; and in Subsection B, in the first sentence, after "quarterly to review", added "the current status of prescription drug misuse and overdose prevention and"; after "New Mexico and national", added "prescription drug misuse and overdose prevention and"; and after "professionals", deleted "and" and added a period; and in the second sentence, added "The council"; after "shall", added "also"; after "pain management", added "and clinical"; and after "guidelines", deleted "for each health care profession licensed in New Mexico with prescriptive authority to its respective board".

24-2D-6. Scope of act.

Nothing in the Pain Relief Act shall be construed as expanding the authorized scope of practice of health care providers.

History: Laws 1999, ch. 126, § 6.

24-2 D-7. Requirements for health care providers who prescribe, distribute or dispense opioid analgesics.

A. A health care provider who prescribes, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist. With respect to a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the health care provider, the health care provider shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the health care provider prescribes, distributes or dispenses an opioid analgesic each calendar year.

B. A health care provider who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist.

History: Laws 2019, ch. 94, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.