N. M. S. A. 1978, § 24-2D-1

§ 24-2D-1. Short title

This act may be cited as the “Pain Relief Act”.

N. M. S. A. 1978, § 24-2D-2

§ 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 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. “pain” means acute and chronic pain; and

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

N. M. S. A. 1978, § 24-2D-3

§ 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.

N. M. S. A. 1978, § 24-2D-4

§ 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[1] 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.

N. M. S. A. 1978, § 24-2D-5

§ 24-2D-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.

N. M. S. A. 1978, § 24-2D-5.1

§ 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.

N. M. S. A. 1978, § 24-2D-5.2

§ 24-2D-5.2. Prescription drug misuse and overdose prevention and pain management advisory council created; duties

A. The "prescription drug misuse and 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 New Mexico medical board, the board of nursing, the board of pharmacy, the board of osteopathic medical examiners, the board of acupuncture and oriental medicine, the New Mexico board of dental health care, the board of chiropractic examiners, the university of New Mexico health sciences center, 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 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 prescription drug misuse and overdose prevention and current pain management practices in New Mexico and national prescription drug misuse and overdose prevention and pain management standards and educational efforts for both consumers and professionals. The council shall also recommend pain management and clinical guidelines. Members who are not public employees shall receive per diem and mileage as provided in the Per Diem and Mileage Act.[1] Public employee members shall receive mileage from their respective employers for attendance at council meetings.

N. M. S. A. 1978, § 24-2D-6

§ 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.