WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 329

BY SENATORS WELD, CLINE, DRENNAN, AND FERNS

[Introduced January 19, 2018; Referred

to the Committee on Health and Human Resources; and

then to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-4G-1, §16-4G-2, §16-4G-3, §16-4G-4, and §16-4G-5, all relating to prescribing of opioids; defining terms; limiting the quantity of opioids prescribed in specified circumstances; setting out requirements for prescribing opioids for acute pain; setting forth requirements for subsequent prescribing of opioids; requiring patient counseling; allowing for a referral to a pain management clinic in certain circumstances; requiring accessing of the Controlled Substance Monitoring Database in certain instances; and providing for exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4G. ACUTE PAIN MANAGEMENT.

§16-4G-1. Definitions.

(a) "Acute pain" means pain, whether resulting from disease, accidental or intentional trauma, or other cause, that a practitioner reasonably expects to last only a short period of time. For purposes of this article, "acute pain" does not include chronic pain, pain being treated as part of cancer care, hospice, or other end of life care, or pain being treated as part of palliative care.

(b) "Chronic pain clinic" means the same as that term is defined in §16-5H-1 *et seq.* of this code.

(c) "Controlled Substance Monitoring Database" means the database created in §60A-9-1 *et seq.* of this code.

(d) "Initial prescription" means a prescription issued to a patient who:

(1) Has never previously been issued a prescription for the drug or its pharmaceutical equivalent; or

(2) Was previously issued a prescription for the drug or its pharmaceutical equivalent, but the date on which the current prescription is being issued is more than one year after the date the patient last used or was administered the drug or its equivalent. To determine whether a patient was previously issued a prescription for a drug or its pharmaceutical equivalent, the

practitioner shall consult with the patient and review the patient's medical record and prescription monitoring information.

(e) "Practitioner" means a medical doctor, doctor of osteopathy, dentist, optometrist, podiatrist, physician assistant, or advanced practice registered nurse acting within the scope of practice of their professional license pursuant to §30-1-1 *et seq.* of this code.

(f) "Schedule II controlled substances" means those substances listed in §60A-2-206 of this code.

§16-4G-2. Limitations; prescribing requirements.

(a) A practitioner may not issue an initial prescription for an opioid drug which is listed as a Schedule II controlled substance in a quantity exceeding a seven-day supply for treatment of acute pain. Any prescription for acute pain pursuant to this subsection shall be for the lowest effective dose of immediate-release opioid drug.

(b) Prior to issuing an initial prescription of a course of treatment that includes a Schedule II controlled substance in a course of treatment for acute or chronic pain, a practitioner shall:

(1) Take and document the results of a thorough medical history, including the patient's experience with nonopioid medication and nonpharmacological pain management approaches and substance abuse history;

(2) Conduct, as appropriate, and document the results of a physical examination;

(3) Develop a treatment plan, with particular attention focused on determining the cause of the patient's pain;

(4) Access relevant prescription monitoring information under the controlled substances monitoring database, and

(5) Limit the supply of any opioid drug prescribed for acute pain to a duration of no more than seven days as determined by the directed dosage and frequency of dosage.

§16-4G-3. Subsequent prescriptions; limitations.

(a) No less than six days after issuing the initial prescription as set forth in §16-4G-2 of this code, the practitioner, after consultation with the patient, may issue a subsequent prescription for the drug to the patient in any quantity that complies with applicable state and federal laws, provided that:

(1) The subsequent prescription would not be considered an initial prescription under this section;

(2) The practitioner determines the prescription is necessary and appropriate to the patient's treatment needs and documents the rationale for the issuance of the subsequent prescription; and

(3) The practitioner determines that issuance of the subsequent prescription does not present an undue risk of abuse, addiction, or diversion and documents that determination.

(b) Prior to issuing the initial prescription in a course of treatment for acute pain that includes a Schedule II controlled substance and again prior to issuing the subsequent prescription of the course of treatment, a practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is under 18 years of age and is not an emancipated minor, the risks associated with the drugs being prescribed. This discussion shall include but not limited to:

(1) The risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

(2) The reasons why the prescription is necessary;

(3) Alternative treatments that may be available; and

(4) Risks associated with the use of the drugs being prescribed, specifically that opioids are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the controlled substance, and that the risks of taking more opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with

opioids, can result in fatal respiratory depression.

(c) The discussion as set forth in subdivision (b) of this section shall be included in a notation in the patient's medical record.

§16-4G-4. Ongoing treatment; referral to chronic pain clinic.

(a) At the time of the issuance of the third prescription for a prescription opioid drug, the practitioner shall consider a referral to a chronic pain clinic.

(b) If the patient remains a patient of the practitioner and practitioner continues to prescribe a Schedule II controlled substance for three months or more for pain, the practitioner shall:

(1) Review, at a minimum of every three months, the course of treatment, any new information about the etiology of the pain, and the patient's progress toward treatment objectives, and document the results of that review;

(2) Assess the patient prior to every renewal to determine whether the patient is experiencing problems associated with physical and psychological dependence and document the results of that assessment;

(3) Periodically make reasonable efforts, unless clinically contraindicated, to either stop the use of the controlled substance, decrease the dosage, try other drugs or treatment modalities in an effort to reduce the potential for abuse or the development of physical or psychological dependence, and document with specificity the efforts undertaken; and

(4) Review the Controlled Substance Monitoring Database as required by §60a-9-1 *et seq.* of this code.

§16-4G-5. Exceptions.

This article may not apply to a prescription for a patient who is currently in active treatment for cancer, receiving hospice care from a licensed hospice or palliative care, or is a resident of a long-term care facility, or to any medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.

NOTE: The purpose of this bill is to limit the quantity of opioids prescribed in specified circumstances. The bill sets out requirements for prescribing opioids for acute pain and for subsequent prescribing of opioids. The bill requires patient counseling and permits a referral to a pain management clinic in certain circumstances. The bill requires accessing of the Controlled Substance Monitoring Database in certain instances and provides for exceptions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.