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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senators Lombardi, Ciccone, and Nesselbush

Date Introduced: February 13, 2020

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-37.4-2 and 5-37.4-3 of the General Laws in Chapter 5-37.4
2 entitled "Intractable Pain Treatment" are hereby amended to read as follows:

3 **5-37.4-2. Definitions.**

4 For purposes of this chapter:

5 (1) "Chronic intractable pain" means pain that is: excruciating; constant; incurable, and of
6 such severity that it dominates virtually every conscious moment; produces mental and physical
7 debilitation; and may produce a desire to commit suicide for the sole purpose of stopping the
8 pain. A diagnosis and written documentation of chronic intractable pain made by a physician
9 licensed in the state of Rhode Island shall constitute proof that the patient suffers from chronic
10 intractable pain.

11 ~~(1)~~(2) "Director" means the director of the department of health of the state of Rhode
12 Island.

13 ~~(2)~~(3) "Intractable pain" means a pain state that persists beyond the usual course of an
14 acute disease or healing of an injury or results from a chronic disease or condition that causes
15 continuous or intermittent pain over a period of months or years. Unless the context clearly
16 indicates otherwise, the term intractable pain includes chronic intractable pain.

17 ~~(3)~~(4) "Practitioner" means health care professionals licensed to distribute, dispense, or
18 administer controlled substances in the course of professional practice as defined in § 21-28-
19 1.02(41).

1 ~~(4)~~(5) "Therapeutic purpose" means the use of controlled substances for the treatment of
2 pain in appropriate doses as indicated by the patient's medical record. Any other use is
3 nontherapeutic.

4 **5-37.4-3. Controlled substances.**

5 (a) A practitioner may prescribe, administer, or dispense controlled substances not
6 prohibited by law for a therapeutic purpose to a person diagnosed and treated by a practitioner for
7 a condition resulting in intractable pain, if this diagnosis and treatment has been documented in
8 the practitioner's medical records. No practitioner shall be subject to disciplinary action by the
9 board solely for prescribing, administering, or dispensing controlled substances when prescribed,
10 administered, or dispensed for a therapeutic purpose for a person diagnosed and treated by a
11 practitioner for a condition resulting in intractable pain, if this diagnosis and treatment has been
12 documented in the practitioner's medical records.

13 (b) The provisions of subsection (a) of this section do not apply to those persons being
14 treated by a practitioner for chemical dependency because of their use of controlled substances
15 not related to the therapeutic purposes of treatment of intractable pain.

16 (c) The provisions of subsection (a) of this section provide no authority to a practitioner
17 to prescribe, administer, or dispense controlled substances to a person the practitioner knows or
18 should know to be using the prescribed, administered, or dispensed controlled substance non-
19 therapeutically.

20 (d) Drug dependency or the possibility of drug dependency in and of itself is not a reason
21 to withhold or prohibit prescribing, administering, or dispensing controlled substances for the
22 therapeutic purpose of treatment of a person for intractable pain, nor shall dependency relating
23 solely to this prescribing, administering, or dispensing subject a practitioner to disciplinary action
24 by the director.

25 ~~(e)~~ Practitioners shall not refuse treatment consistent with federal or state laws,
26 regulations or guidelines for the prescribing of controlled substances under this chapter for the
27 sole reason that a patient requires intensive treatment.

28 ~~(f)~~ In coordination with §§ 21-28-3.20 and 21-28-3.20.1, the director of health may
29 promulgate rules and regulations necessary to effectuate the purpose of this chapter and ensure
30 that patients with intractable or chronic intractable pain are treated with dignity and not unduly
31 denied the medications needed to treat their conditions.

32 ~~(g)~~ Nothing in this section shall be construed to prohibit a practitioner or pharmacist from
33 denying a prescription based on their best clinical judgement.

34 ~~(e)~~(h) Nothing in this section shall deny the right of the director to deny, revoke, or

1 suspend the license of any practitioner or discipline any practitioner who:

2 (1) Prescribes, administers, or dispenses a controlled substance that is nontherapeutic in
3 nature or nontherapeutic in the manner in which it is prescribed, administered, or dispensed, or
4 fails to keep complete and accurate on-going records of the diagnosis and treatment plan;

5 (2) Fails to keep complete and accurate records of controlled substances received,
6 prescribed, dispensed and administered, and disposal of drugs as required by law or of controlled
7 substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21
8 U.S.C. § 801, et seq. A practitioner shall keep records of controlled substances received,
9 prescribed, dispensed and administered, and disposal of these drugs shall include the date of
10 receipt of the drugs, the sale or disposal of the drugs by the practitioner, the name and address of
11 the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to
12 the person;

13 (3) Writes false or fictitious prescriptions for controlled substances as prohibited by law,
14 or for controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control
15 Act of 1970, 21 U.S.C § 801, et seq.; or

16 (4) Prescribes, administers, or dispenses in a manner which is inconsistent with
17 provisions of the law, or the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21
18 U.S.C. § 801, et seq., any controlled substance.

19 ~~(i)~~ (i) A practitioner may administer a controlled substance prescribed by a practitioner
20 and not prohibited by law for a therapeutic purpose to a person diagnosed and treated by a
21 practitioner for a condition resulting in intractable pain, if this diagnosis and treatment has been
22 documented in the practitioner's medical records. No practitioner shall be subject to disciplinary
23 action by the director solely for administering controlled substances when prescribed or dispensed
24 for a therapeutic purpose for a person diagnosed and treated by a practitioner for a condition
25 resulting in intractable pain, if this diagnosis and treatment has been documented in the
26 practitioner's medical records of the patient.

27 SECTION 2. Section 21-28-3.20 of the General Laws in Chapter 21-28 entitled "Uniform
28 Controlled Substances Act" is hereby amended to read as follows:

29 **21-28-3.20. Authority of practitioner to prescribe, administer, and dispense.**

30 (a)(1) A practitioner, in good faith and in the course of his or her professional practice
31 only, may prescribe, administer, and dispense controlled substances, or he or she may cause the
32 controlled substances to be administered by a nurse or intern under his or her direction and
33 supervision.

34 (2) When issuing an initial prescription for an opiate to an adult patient, a practitioner

1 shall not exceed the maximum daily dose requirements established by the department of health.

2 (3) Except as provided in subsection (a)(4) of this section, a practitioner shall not issue an
3 opiate prescription to a minor for more than twenty (20) doses at any time. Prior to issuing an
4 opiate prescription to a minor, a practitioner shall discuss with the parent or guardian of the minor
5 the risks associated with opiate use and the reasons why the prescription is necessary. The
6 practitioner shall document his or her discussion with the parent or guardian in the medical
7 record.

8 (4) Notwithstanding the limitations referenced in subsection (a)(3) of this section, if, in
9 the professional medical judgment of a practitioner, a greater dosage or supply of an opiate is
10 required to treat the minor patient's acute medical condition or is necessary for the treatment of
11 chronic pain management, sickle cell related pain, intractable pain treatment as defined in chapter
12 37.4 of title 5, pain associated with a cancer diagnosis, or for palliative care, then the practitioner
13 may issue a prescription for the quantity needed to treat the acute medical condition, chronic pain,
14 sickle cell related pain, intractable pain, pain associated with a cancer diagnosis, or pain
15 experienced while the patient is in palliative care, provided that this dosage shall not exceed the
16 maximum daily dosage permitted for the treatment of this pain as set forth in the department of
17 health regulations. The condition triggering the prescription of an opiate shall be documented in
18 the minor patient's medical record, and the practitioner shall indicate that a non-opiate alternative
19 was not appropriate to address the medical condition.

20 (5) Notwithstanding subsections (a)(2) and (a)(3) of this section, this section shall not
21 apply to medications designed for the treatment of substance abuse or opioid dependence.

22 (b) The prescription-monitoring program shall be reviewed prior to starting any opioid. A
23 prescribing practitioner, or designee as authorized by § 21-28-3.32(a)(3), shall review the
24 prescription-monitoring program prior to refilling or initiating opioid therapy with an intrathecal
25 pump. For patients the prescribing practitioner is maintaining on continuous opioid therapy for
26 pain for three (3) months or longer, the prescribing practitioner shall review information from the
27 prescription-monitoring program at least every three (3) months. Documentation of that review
28 shall be noted in the patient's medical record.

29 (c) The director of health shall develop regulations for prescribing practitioners on
30 appropriate limits of opioid use in acute pain management. Initial prescriptions of opioids for
31 acute pain management of outpatient adults shall not exceed thirty (30) morphine milligram
32 equivalents (MMEs) total daily dose per day for a maximum total of twenty (20) doses, and, for
33 pediatric patients, the appropriate opioid dosage maximum per the department of health.

34 (d) For the purposes of this section, acute pain management shall not include chronic pain

1 management, pain associated with a cancer diagnosis, palliative or nursing home care, [intractable](#)
2 [or chronic intractable pain, as provided in § 5-37.4-2](#), or other exception in accordance with
3 department of health regulations.

4 (e) Subsection (c) shall not apply to medications designed for the treatment of substance
5 abuse or opioid dependence.

6 (f) On or before September 1, 2018, the director of health shall develop, and make
7 available to healthcare practitioners, information on best practices for co-prescribing opioid
8 antagonists to patients. The best practices information shall identify situations in which co-
9 prescribing an opioid antagonist may be appropriate, including, but not limited to:

10 (1) In conjunction with a prescription for an opioid medication, under circumstances in
11 which the healthcare practitioner determines the patient is at an elevated risk for an opioid drug
12 overdose;

13 (2) In conjunction with medications prescribed pursuant to a course of medication
14 therapy management for the treatment of a substance use disorder involving opioids; or

15 (3) Under any other circumstances in which a healthcare practitioner identifies a patient
16 as being at an elevated risk for an opioid drug overdose.

17 (g) The best practices information developed pursuant to subsection (f) of this section
18 shall include guidelines for determining when a patient is at an elevated risk for an opioid drug
19 overdose, including, but not limited to, situations in which the patient:

20 (1) Meets the criteria provided in the opioid overdose toolkit published by the federal
21 substance abuse and mental health service administration;

22 (2) Is receiving high-dose, extended-release, or long-acting opioid medications;

23 (3) Has a documented history of an alcohol or substance use disorder, or a mental health
24 disorder;

25 (4) Has a respiratory ailment or other co-morbidity that may be exacerbated by the use of
26 opioid medications;

27 (5) Has a known history of intravenous drug use or misuse of prescription opioids;

28 (6) Has received emergency medical care or been hospitalized for an opioid overdose; or

29 (7) Uses opioids with antidepressants, benzodiazepines, alcohol, or other drugs.

30 (h) On or before September 1, 2018, the director of health and the secretary of the
31 executive office of health and human services shall develop strategies that include:

32 (1) Allowing practitioners in non-pharmacy settings to prescribe and dispense opioid
33 antagonists; and

34 (2) Ensuring that opioid antagonists that are distributed in a non-pharmacy setting are

1 eligible for reimbursement from any health insurance carrier, as defined under chapters 18, 19,
2 20, and 41 of title 27, and the Rhode Island medical assistance program, as defined under chapter
3 7.2 of title 42.

4 SECTION 3. Chapter 21-28 of the General Laws entitled "Uniform Controlled
5 Substances Act" is hereby amended by adding thereto the following section:

6 **21-28-3.20.1. Authority of practitioner to prescribe, administer, and dispense --**
7 **Cancer, palliative care and chronic intractable pain.**

8 (a) A practitioner, in good faith and in the course of his or her professional practice
9 managing pain associated with a cancer diagnosis, palliative or nursing home care, intractable or
10 chronic intractable pain as provided in § 5-37.4-2, or other condition allowed by department of
11 health regulations pursuant to the exception in § 21-28-3.20(d), may prescribe, administer, and
12 dispense controlled substances, or he or she may cause the controlled substances to be
13 administered by a nurse or intern under his or her direction and supervision without regard to the
14 2016 CDC Guideline for Prescribing Opioids for Chronic Pain.

15 (b) Practitioners, in the course of their professional practice, shall not refuse treatment to
16 patients covered under this section for the sole reason that these patients require intensive
17 treatment.

18 (c) The director of health may promulgate those rules and regulations necessary to
19 effectuate the provisions of this section and ensure that rules governing pain management
20 associated with a cancer diagnosis, palliative or nursing home care, intractable or chronic
21 intractable pain as provided in § 5-37.4-2, or other condition allowed by department of health
22 regulations pursuant to the exception created in § 21-28-3.20(d), shall:

23 (1) Take into consideration the individualized needs of patients covered by this section;

24 (2) Make provisions for practitioners, acting in good faith, and in the course of their
25 profession, and managing pain associated with their patients' illness to use their best judgment
26 notwithstanding any statute, rule or regulation to the contrary; and

27 (3) Ensure that patients covered by this section are treated with dignity and not unduly
28 denied the medications needed to treat their conditions.

29 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

1 This act would exclude chronic intractable pain from the definition of "acute pain
2 management", for purposes of prescribing, administering and dispensing controlled substances by
3 a practitioner. The act would prescribe new guidelines for the treatment of "chronic intractable
4 pain" based upon the 2016 CDC Guideline for Prescribing Opioids for Chronic Pain.

5 This act would take effect upon passage.

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