

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 23-144

BY SENATOR(S) Ginal, Marchman, Buckner, Fields, Gardner, Kirkmeyer, Liston, Lundeen, Pelton R., Rich, Smallwood, Will, Zenzinger;
also REPRESENTATIVE(S) Mabrey and Young, Bacon, Bird, Boesenecker, Duran, Epps, Froelich, Garcia, Gonzales-Gutierrez, Hamrick, Herod, Jodeh, Joseph, Kipp, Lieder, Lindsay, Ortiz, Parenti, Snyder, Story, Titone, Velasco, Willford.

CONCERNING PRESCRIPTION DRUGS FOR THE TREATMENT OF CHRONIC PAIN.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 12-30-109.5 as follows:

12-30-109.5. Prescription drugs for treatment of chronic pain - patients - prescribers - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CARRIER" HAS THE SAME MEANING AS SET FORTH IN 10-16-102 (8).

(b)(I) "CHRONIC PAIN" MEANS A PAIN THAT TYPICALLY LASTS THREE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

MONTHS OR LONGER AND MAY BE THE RESULT OF AN UNDERLYING MEDICAL DISEASE OR CONDITION, INJURY, MEDICAL TREATMENT, INFLAMMATION, OR UNKNOWN CAUSE. "CHRONIC PAIN" IS A PAIN STATE IN WHICH THE CAUSE OF THE PAIN OFTEN CANNOT BE REMOVED WITH REASONABLE MEDICAL EFFORTS AT THE CONSENT OF THE PATIENT, OR PAIN FOR WHICH NO CURE CAN BE FOUND AFTER REASONABLE MEDICAL EFFORTS. CHRONIC PAIN MAY RESTRICT THE ABILITY OF INDIVIDUALS TO WORK, CARE FOR THEMSELVES, AND ENGAGE IN BASIC LIFE, SOCIAL, AND PHYSICAL ACTIVITIES.

(II) CONDITIONS ASSOCIATED WITH CHRONIC PAIN MAY INCLUDE, BUT ARE NOT LIMITED TO, CANCER AND THE RECOVERY PERIOD, SICKLE CELL DISEASE, NONCANCER PAIN, RARE DISEASES, SEVERE INJURIES, AND HEALTH CONDITIONS REQUIRING THE PROVISION OF PALLIATIVE CARE OR HOSPICE CARE.

(III) REASONABLE EFFORTS FOR RELIEVING OR CURING THE CAUSE OF THE CHRONIC PAIN MAY BE DETERMINED ON THE BASIS OF, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(A) WHEN TREATING A NONTERMINALLY ILL PATIENT FOR CHRONIC PAIN, AN EVALUATION CONDUCTED BY THE TREATING HEALTH-CARE PROVIDER OR A HEALTH-CARE PROVIDER SPECIALIZING IN PAIN MEDICINE OR TREATMENT OF THE AREA, SYSTEM, OR ORGAN OF THE BODY CONFIRMED OR PERCEIVED AS THE SOURCE OF THE CHRONIC PAIN; OR

(B) WHEN TREATING A TERMINALLY ILL PATIENT, AN EVALUATION CONDUCTED BY THE TREATING HEALTH-CARE PROVIDER WHO CONDUCTS THE EVALUATION IN ACCORDANCE WITH THE STANDARD OF CARE AND THE LEVEL OF CARE, SKILL, AND TREATMENT THAT WOULD BE RECOGNIZED BY A HEALTH-CARE PROVIDER UNDER SIMILAR CONDITIONS AND CIRCUMSTANCES.

(c) "DRUG DIVERSION" MEANS THE UNLAWFUL TRANSFER OF PRESCRIPTION DRUGS FROM A LICIT MEDICAL PURPOSE TO THE ILLICIT MARKETPLACE.

(d) "HEALTH-CARE PROVIDER" MEANS A PHYSICIAN, A PHYSICIAN ASSISTANT, OR AN ADVANCED PRACTICE REGISTERED NURSE LICENSED PURSUANT TO THIS TITLE 12.

(e) "RARE DISEASE" MEANS A DISEASE, DISORDER, OR CONDITION

THAT AFFECTS FEWER THAN TWO HUNDRED THOUSAND INDIVIDUALS IN THE UNITED STATES AND IS CHRONIC, SERIOUS, LIFE-ALTERING, OR LIFE-THREATENING.

(f) "SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE" MEANS A CONTROLLED SUBSTANCE AS DESCRIBED IN SECTION 18-18-204, 18-18-205, 18-18-206, OR 18-18-207, RESPECTIVELY.

(2) Criteria for the evaluation and treatment of chronic pain.

WHEN TREATING A NONTERMINALLY ILL PATIENT, THE EVALUATION OF THE PATIENT AND THE TREATMENT OF THE PATIENT'S CHRONIC PAIN IS GOVERNED BY THE FOLLOWING CRITERIA:

(a) A DIAGNOSIS OF A CONDITION CAUSING CHRONIC PAIN BY THE TREATING HEALTH-CARE PROVIDER OR A HEALTH-CARE PROVIDER SPECIALIZING IN PAIN MEDICINE OR TREATMENT OF THE AREA, SYSTEM, OR ORGAN OF THE BODY CONFIRMED OR PERCEIVED AS THE SOURCE OF THE PAIN THAT IS SUFFICIENT TO MEET THE DEFINITION OF CHRONIC PAIN; AND

(b) THE CAUSE OF THE DIAGNOSIS OF CHRONIC PAIN MUST NOT INTERFERE WITH MEDICALLY NECESSARY TREATMENT, INCLUDING BUT NOT LIMITED TO PRESCRIBING OR ADMINISTERING A SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE.

(3) Prescription and administration of controlled substances for chronic pain.

(a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A HEALTH-CARE PROVIDER MAY PRESCRIBE, DISPENSE, OR ADMINISTER A SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE TO A PATIENT IN THE COURSE OF THE HEALTH-CARE PROVIDER'S TREATMENT OF THE PATIENT FOR A DIAGNOSED CONDITION CAUSING CHRONIC PAIN. A HEALTH-CARE PROVIDER IS NOT SUBJECT TO DISCIPLINARY ACTION BY THE REGULATOR FOR APPROPRIATELY PRESCRIBING, DISPENSING, OR ADMINISTERING A SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE IN THE COURSE OF TREATMENT OF A PATIENT FOR CHRONIC PAIN IF THE HEALTH-CARE PROVIDER KEEPS ACCURATE RECORDS OF THE PURPOSE, USE, PRESCRIPTION, AND DISPOSAL OF THE CONTROLLED SUBSTANCE, WRITES ACCURATE PRESCRIPTIONS, AND PRESCRIBES MEDICATIONS IN ACCORDANCE WITH LEGITIMATE MEDICAL PURPOSE IN THE USUAL COURSE OF PROFESSIONAL PRACTICE.

(b) A HEALTH-CARE PROVIDER ACTING IN GOOD FAITH AND BASED ON

THE NEEDS OF THE PATIENT WITH A DIAGNOSED CONDITION CAUSING CHRONIC PAIN IS NOT SUBJECT TO DISCIPLINE FROM THE REGULATOR SOLELY FOR PRESCRIBING A DOSAGE THAT EQUATES TO AN UPWARD DEVIATION FROM MORPHINE MILLIGRAM EQUIVALENT DOSAGE RECOMMENDATIONS OR FROM THRESHOLDS SPECIFIED IN STATE OR FEDERAL OPIOID PRESCRIBING GUIDELINES OR POLICIES.

(c) A HEALTH-CARE PROVIDER TREATING A PATIENT WITH CHRONIC PAIN BY PRESCRIBING, DISPENSING, OR ADMINISTERING ONE OR MORE SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCES THAT INCLUDE, BUT ARE NOT LIMITED TO, OPIOID ANALGESICS SHALL NOT BE REQUIRED TO TAPER A PATIENT'S MEDICATION DOSAGE SOLELY TO MEET A PREDETERMINED MORPHINE MILLIGRAM EQUIVALENT DOSAGE RECOMMENDATION OR THRESHOLD IF THE PATIENT IS STABLE AND COMPLIANT WITH THE TREATMENT PLAN AND IS NOT EXPERIENCING SERIOUS HARM FROM THE LEVEL OF MEDICATION CURRENTLY BEING PRESCRIBED OR PREVIOUSLY PRESCRIBED. A DECISION TO TAPER OR MAINTAIN MEDICATION MUST INCLUDE AN INDIVIDUALIZED ASSESSMENT OF THE PATIENT'S CURRENT MEDICAL CONDITION AND TREATMENT PLAN, THE RISKS AND BENEFITS OF MAINTAINING OR TAPERING THE PATIENT'S MEDICATION, AND A DISCUSSION WITH THE PATIENT.

(d) (I) A PHARMACY, CARRIER, OR PHARMACY BENEFIT MANAGER SHALL NOT HAVE A POLICY IN PLACE THAT REQUIRES THE PHARMACIST TO REFUSE TO FILL A PRESCRIPTION FOR AN OPIATE ISSUED BY A HEALTH-CARE PROVIDER WITH THE AUTHORITY TO PRESCRIBE OPIATES SOLELY BECAUSE THE PRESCRIPTION IS FOR AN OPIATE OR BECAUSE THE PRESCRIPTION ORDER EXCEEDS A PREDETERMINED MORPHINE MILLIGRAM EQUIVALENT DOSAGE RECOMMENDATION OR THRESHOLD.

(II) A HEALTH-CARE PRACTICE OR CLINIC IN WHICH A HEALTH-CARE PROVIDER IS AUTHORIZED TO PRESCRIBE SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCES SHALL NOT HAVE A POLICY IN PLACE THAT REQUIRES THE HEALTH-CARE PROVIDER TO REFUSE TO PRESCRIBE, ADMINISTER, OR DISPENSE A PRESCRIPTION FOR AN OPIATE SOLELY BECAUSE THE PRESCRIPTION EXCEEDS A PREDETERMINED MORPHINE MILLIGRAM EQUIVALENT DOSAGE RECOMMENDATION OR THRESHOLD.

(e) BEFORE TREATING A PATIENT FOR CHRONIC PAIN IN ACCORDANCE WITH THIS SUBSECTION (3), A HEALTH-CARE PROVIDER SHALL DISCUSS WITH

THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN, IF APPLICABLE, THE RISKS ASSOCIATED WITH THE SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE TO BE PRESCRIBED OR ADMINISTERED IN THE COURSE OF THE HEALTH-CARE PROVIDER'S TREATMENT OF THE PATIENT AND DOCUMENT THE DISCUSSION IN THE PATIENT'S RECORD.

(4) **Limits on applicability.** (a) THIS SECTION DOES NOT APPLY TO:

(I) A HEALTH-CARE PROVIDER'S TREATMENT OF A PATIENT FOR A SUBSTANCE USE DISORDER RESULTING FROM THE USE OF A SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE;

(II) THE PRESCRIPTION OR ADMINISTRATION OF A SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE TO A PATIENT WHOM THE HEALTH-CARE PROVIDER KNOWS TO BE USING THE CONTROLLED SUBSTANCE FOR NONTHERAPEUTIC OR DRUG DIVERSION PURPOSES;

(III) THE PRESCRIPTION, DISPENSING, OR ADMINISTRATION OF A SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE FOR THE PURPOSE OF TERMINATING THE LIFE OF A PATIENT WITH CHRONIC PAIN; OR

(IV) THE PRESCRIPTION, DISPENSING, OR ADMINISTRATION OF A SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE THAT IS NOT A CONTROLLED SUBSTANCE APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR PAIN RELIEF.

(b) THIS SECTION DOES NOT LIMIT THE POWERS AND DUTIES OF THE COLORADO MEDICAL BOARD PURSUANT TO SECTION 12-240-106 OR THE STATE BOARD OF NURSING PURSUANT TO SECTION 12-255-107.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO