State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3746

02/24/2020 Authored by Munson
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

A bill for an act

relating to health; changing intractable pain provisions; amending Minnesota Statutes 2018, section 152.125.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2018, section 152.125, is amended to read:

152.125 INTRACTABLE PAIN.

Subdivision 1. **Definition.** For purposes of this section, "intractable pain" means a pain state, that includes but is not limited to noncancer pain and rare diseases, in which the cause or causes of the pain cannot be removed or otherwise treated with the consent of the patient and in which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts. Reasonable efforts for relieving or curing the cause of the pain may be determined on the basis of, but are not limited to, the following:

(1) when treating a nonterminally ill patient for intractable pain, evaluation by the attending or treating physician and one or more physicians specializing in pain medicine or the treatment of the area, system, disease, or organ of the body perceived as the source of the pain; or

(2) when treating a terminally ill patient, evaluation by the attending physician who does so in accordance with the level of care, skill, and treatment that would be recognized by a reasonably prudent physician under similar conditions and circumstances.

Subd. 2. **Prescription and administration of controlled substances for intractable pain.** Notwithstanding any other provision of this chapter, a physician may prescribe or

administer a controlled substance in Schedules II to V of section 152.02 to an individual in the course of the physician's treatment of the individual for a diagnosed condition, injury, disease, or disorder causing intractable pain. No physician ~~shall be~~ or licensed prescriber is subject to disciplinary action by the Board of Medical Practice, or the prescriber's licensing board, or disenrollment by the Departments of Health and Human Services for appropriately prescribing or administering a controlled substance in Schedules II to V of section 152.02 in the course of what the physician or licensed prescriber, after careful and lawful consideration, has deemed to be a medically necessary treatment of an individual for intractable pain, provided the physician keeps accurate records of the patient's diagnosis and any purpose, use, ~~prescription~~ prescriptions given, and disposal of controlled substances~~,~~ ~~writes accurate prescriptions~~ follows state protocol for the prescription drug monitoring program, and prescribes medications in conformance with chapter 147. No physician or licensed prescriber complying with this section in a lawful, responsible manner shall be charged with overprescribing based solely on the dosage of morphine milligram equivalent without any other contributing factors. There is no state or federal law on morphine milligram equivalent dosing.

Subd. 2a. **Morphine milligram equivalent dosage when prescribing or administering a controlled substance for intractable pain.** (a) A treating physician's patient care, prescribing, or administering of a controlled substance or opioid analgesic shall not be dictated by predetermined morphine milligram equivalent (MME) dosages and hard thresholds that are outside of the United States Food and Drug Administration labeling for the specific prescribed medication. Physicians and licensed prescribers must take into account the health care needs, metabolism, genetic factors, and specific complexities of each individual patient. Physicians treating intractable pain shall not taper patient dosage or refuse to continue to treat or prescribe solely to meet state or federal guidelines, recommendations, or thresholds outlined in the Department of Health quality improvement program.

(b) Physicians, clinics, hospitals, and facilities who treat intractable pain are exempt from mandatory compliance with MME recommendations and thresholds, including the Centers for Disease Control and Prevention guidelines, Minnesota guidelines, and the quality improvement program guidelines as they neglect to address intractable pain and the complications of untreated intractable pain.

Subd. 2b. **Guidelines for physicians treating intractable pain.** For the purpose of establishing intractable pain guidelines, physicians and licensed prescribers treating patients

diagnosed with intractable pain must comply with this section. This section constitutes the state's intractable pain guidelines for prescribing opioid pain medication.

Subd. 3. **Limits on applicability.** This section does not apply to:

(1) a physician's treatment of an individual for chemical dependency resulting from the use of controlled substances in Schedules II to V of section 152.02;

(2) the prescription or administration of controlled substances in Schedules II to V of section 152.02 to an individual whom the physician knows to be using the controlled substances for nontherapeutic purposes;

(3) the prescription or administration of controlled substances in Schedules II to V of section 152.02 for the purpose of terminating the life of an individual having intractable pain; or

(4) the prescription or administration of a controlled substance in Schedules II to V of section 152.02 that is not a controlled substance approved by the United States Food and Drug Administration for pain relief.

Subd. 4. **Notice of risks.** (a) Prior to treating ~~an individual~~ a patient for intractable pain in accordance with subdivision 2, a physician or licensed prescriber shall discuss with the ~~individual~~ patient, or the guardian of a patient who is under the age of 18, the risks associated with the controlled substances in Schedules II to V of section 152.02 to be prescribed or administered in the course of the physician's treatment of ~~an individual, and document~~ the patient's intractable pain. The discussion must be documented in the ~~individual's~~ patient's record.

(b) The physician or licensed prescriber and the patient or guardian must execute an informed consent to be treated with opioid medications deemed medically necessary by the physician and agreed to by the patient or guardian to treat the patient's intractable pain. Informed consent must include information on the possible risks and outline expected benefits for the specific opioid medication that is being prescribed in addition to attaching a printout of the specific prescribed opioid medication with FDA labeling, including any black box warnings. The informed consent is valid for one year after the date of consent.

(c) A new informed consent is required for a change of the type or brand of opioid medication, including a dosage change, whether increased or decreased. An executed informed consent is not required in emergency situations but is recommended if a request is reasonable based on emergency circumstances.

EFFECTIVE DATE. This section is effective the day following final enactment.