SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 1485

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02/25/2021	565	Introduction and first reading Referred to Health and Human Services Finance and Policy
05/13/2021	4205	Author added Marty

A bill for an act

relating to health care; modifying the definition of intractable pain; modifying the criteria for prescribing controlled substance for the treatment of intractable pain; amending Minnesota Statutes 2020, section 152.125.

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

Section 1. Minnesota Statutes 2020, section 152.125, is amended to read:

152.125 INTRACTABLE PAIN.

Subdivision 1. **Definition.** (a) For purposes of this section, the definitions in this subdivision have the meanings given to them.

(b) "Intractable pain" means a pain state in which the cause 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. Conditions associated with intractable pain include but are not limited to: cancer, including the recovery period; sickle cell disease; noncancer pain; rare diseases; orphan diseases; severe injuries; and health conditions requiring the provision of palliative care or hospice care. 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 physician ~~and one or more physicians specializing in pain medicine or the treatment of~~, a physician specializing in pain medicine, or a physician treating the area, system, or organ of the body confirmed or perceived as the source of the intractable pain. The evaluation must include a thorough assessment of the patient, the patient's level and severity of pain, the patient's function, any physical disabilities related to pain, daily living activities, and

quality of life. The evaluation must also take into consideration any genetic and metabolism factors or complications, and must be performed in accordance with the standard of care and the level of care, skill, and treatment that would be recognized by a reasonably prudent physician under similar conditions or circumstances; or

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

(c) "Palliative care" means specialized medical care for individuals living with a serious illness or a serious diagnosis that focuses on providing relief from the symptoms and stress of the illness or diagnosis, relieving suffering, and providing the best quality of life. Palliative care may be provided along with curative treatment to individuals with a nonterminal diagnosis.

(d) "Rare disease" means a disease, disorder, or condition that affects fewer than 200,000 individuals in the United States and is chronic, serious, life altering, or life threatening.

Subd. 1a. **Criteria for the evaluation and treatment of intractable pain.** The evaluation and treatment of intractable pain when treating a nonterminally ill patient is governed by the following criteria:

(1) a diagnosis of intractable pain, regardless of confirmation or the perceived source of intractable pain, and regardless of whether the intractable pain is the result of an injury, condition, disorder, or disease is sufficient to meet the definition of intractable pain; and

(2) the cause of the diagnosis of intractable pain, whether confirmed or perceived, must not interfere with medically necessary treatment, including but not limited to prescribing or administering a controlled substance in Schedules II to V of section 152.02.

Subd. 2. **Prescription and administration of controlled substances for intractable pain.** (a) Notwithstanding any other provision of this chapter, a physician or advanced practice registered nurse may prescribe or administer a controlled substance in Schedules II to V of section 152.02 to ~~an individual~~ a patient in the course of the physician's or advanced practice registered nurse's treatment of the ~~individual~~ patient for a diagnosed condition causing intractable pain. No physician or advanced practice registered nurse shall be subject to disciplinary action by the Board of Medical Practice or Board of Nursing for appropriately prescribing or administering a controlled substance in Schedules II to V of section 152.02 in the course of treatment of ~~an individual~~ a patient for intractable pain, provided the physician or advanced practice registered nurse:

(1) keeps accurate records of the purpose, use, prescription, and disposal of controlled substances, writes accurate prescriptions, and prescribes medications in conformance with chapter 147- or 148;

(2) documents in the patient's medical record the assessments performed, all elements of the treatment program, and the rationale for why the prescribed medication and dosage is appropriate, effective, and medically necessary to treat the patient's intractable pain;

(3) documents that the patient shows no signs of abuse, addiction, or diversion at the time of the patient's evaluation and during any follow up visits when a prescription was issued or subsequently refilled;

(4) documents objective assessment of the success or failure of the treatment plan and the results of periodic monitoring and testing; and

(5) enters into a patient-provider agreement that meets the criteria in subdivision 5.

(b) No physician or advanced practice registered nurse, acting in good faith, shall be subject to any civil or criminal action or investigation, disenrollment, or termination by the commissioner of health or human services solely for prescribing a dosage that equates to an upward deviation from morphine milligram equivalent dosage recommendations or thresholds specified in state or federal opioid prescribing guidelines or policies, including but not limited to the Guideline for Prescribing Opioids for Chronic Pain issued by the Centers for Disease Control and Prevention, Minnesota opioid prescribing guidelines, Minnesota opioid prescribing improvement program, and Minnesota quality improvement program established under section 256B.0638.

(c) A physician or advanced practice registered nurse treating intractable pain by prescribing, dispensing, or administering a controlled substance in Schedules II to V in section 152.02, including but not limited to opioid analgesics, must not 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, is benefiting from the level of medication currently being prescribed or previously prescribed, and is in compliance with the patient-provider agreement as described in subdivision 5.

(d) A physician's or advanced practice registered nurse's decision to taper a patient's medication dosage must be based on factors other than a morphine milligram equivalent recommendation or threshold in order to meet criteria of a medically warranted taper.

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

(1) a physician's or an advanced practice registered nurse's treatment of ~~an individual~~ a patient 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~~ a patient whom the physician or advanced practice registered nurse knows to be using the controlled substances for nontherapeutic or diversion 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.** Prior to treating ~~an individual~~ a patient for intractable pain in accordance with subdivision 2, a physician ~~shall~~ or advanced practice registered nurse must discuss with the ~~individual~~ patient or the patient's legal guardian, if applicable, 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 or advanced practice registered nurse's treatment of ~~an individual~~ a patient, and document the discussion in the ~~individual's~~ patient's record as required in the patient-provider agreement described in subdivision 5.

Subd. 5. **Patient-provider agreement.** (a) Before treating a patient for intractable pain, a physician or advanced practice registered nurse and the patient or the patient's legal guardian, if applicable, must enter into a provider-patient agreement. The agreement must include a description of the patient's treatment plan, required monitoring protocols, and the prescribing details of any medication prescribed as part of the treatment plan, including the risks associated with the medication being prescribed and any black box warnings, if applicable, for the medication prescribed.

(b) The agreement must be signed by the patient or the patient's legal guardian, if applicable, and the physician or advanced practice registered nurse, and included in the patient's medical records. A copy of the signed agreement must be provided to the patient.

(c) The agreement must be reviewed by the patient and the physician or advanced practice registered nurse annually. If there is a change in the patient's treatment plan, including a change in medication or dosage, the agreement must be updated and a revised agreement must be signed by the patient or the patient's legal guardian, a copy of the revised agreement must be included in the patient's medical record, and a copy must be provided to the patient.

(d) A patient-provider agreement is not required in an emergency or inpatient hospital setting.