

# STATE OF NEW YORK

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5436

2017-2018 Regular Sessions

## IN SENATE

March 28, 2017

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Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the education law, in relation to chronic pain management

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent: The legislature hereby finds that  
2 medical treatment of chronic pain in this state needs to be reexamined  
3 to enhance the ability to assess such condition, increase access to  
4 appropriate care to treat and mitigate chronic pain, and improve the  
5 quality of life for those afflicted with this condition. Currently  
6 chronic pain is most often treated by primary care providers who may  
7 have little training in the assessment and proper treatment of complex  
8 chronic pain conditions. This, in turn, has led, in certain circum-  
9 stances, to patients seeing multiple health care providers and experi-  
10 encing multiple and repeated diagnostic tests, that lead to inadequate  
11 or unproven surgeries, prescription of unneeded or strong pain medica-  
12 tions, with its consequential heightened possibility to lead to the long  
13 term addiction to such strong pain medications, and the performance of  
14 procedures or treatment regimens that are not able to successfully treat  
15 or mitigate such chronic pain.

16 Further, the current practice of the repeated utilization of different  
17 health practitioners, tests and unnecessary medical procedures to treat  
18 such chronic pain is resulting in higher health care costs. These  
19 increased costs come from unnecessary visits to health care practition-  
20 ers, more and longer hospital stays, performing unnecessary surgeries or  
21 other medical procedures, and unnecessary prescription of costly and  
22 dangerous drugs. This inefficient use of valuable health care resources  
23 is contributing to the rapidly increasing cost of providing health care.  
24 With the continuing aging of New York's general population, this trend  
25 may only continue to grow. Further, the consequences to patients

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD05455-01-7

1 afflicted with chronic pain will continue to undermine the physical,  
2 social, economic and psychological well being of such patients, their  
3 families and loved ones.

4 The current health care delivery system both over treats and under-  
5 treats those afflicted with chronic pain. Ideally, all patients subject  
6 to chronic pain should be able to obtain an appropriate assessment of  
7 the underlying conditions that cause such pain, followed by an appropri-  
8 ate plan of care that reflects the best practices currently available to  
9 prevent the adverse effects of pain. Such care should be provided in a  
10 coordinated manner that minimizes such chronic pain and is cost effec-  
11 tive for the patient, health care delivery system, and for employers of  
12 such persons. In sum, the provision of chronic pain treatments needs a  
13 major reassessment to enhance assessment capabilities, increase access  
14 to appropriate care, improve the quality of care, and do so in a manner  
15 that minimizes the cost of providing such care.

16 § 2. The public health law is amended by adding a new article 28-F to  
17 read as follows:

#### 18 ARTICLE 28-F

#### 19 CHRONIC PAIN MANAGEMENT

#### 20 Section 2899-k. Chronic pain management.

21 § 2899-k. Chronic pain management. 1. Definitions. The following words  
22 or phrases as used in this article shall have the following meanings:

23 (a) "chronic pain" shall mean consistent and significant physical pain  
24 or discomfort that lasts for an extended period of time beyond an acute  
25 physical injury or painful stimulus, and persists unabated for a period  
26 of time greater than six months. Further such condition impedes the  
27 ability of such person from conducting many normal life activities, or  
28 impedes or leads to the loss of employment, or curtails the ability to  
29 perform a number of previously executed physical employment tasks. Such  
30 chronic pain may be associated with cancer pain, pain from chronic or  
31 degenerative diseases or conditions, or from an unidentified cause.

32 (b) "chronic pain care certified medical school" shall mean a medical  
33 school in the state which is an institution which grants a degree of  
34 doctor of medicine or doctor of osteopathic medicine in accordance with  
35 regulations promulgated by the commissioner of education pursuant to  
36 subdivision two of section sixty-five hundred twenty-four of the educa-  
37 tion law, and which meets the standards established pursuant to regu-  
38 lations promulgated by the commissioner, after consultation with the  
39 council, that are used to determine whether a medical school is eligible  
40 for funding pursuant to this section.

41 (c) "chronic pain care certified residency program" shall mean a grad-  
42 uate medical education program in the state which has received accredi-  
43 tation from a nationally recognized accreditation body for medical or  
44 osteopathic residency programs, and which meets the standards estab-  
45 lished pursuant to regulations promulgated by the commissioner, after  
46 consultation with the council, that are used to determine whether a  
47 residency training program is eligible for funding pursuant to this  
48 section.

49 (d) "council" shall mean the state chronic pain management education  
50 and training council established by subdivision two of this section.

51 (e) "health care professionals" shall mean and include those health  
52 care professionals who regularly treat patients that have chronic pain,  
53 and includes, but is not limited to, acupuncturists, chiropractors,  
54 dentists, nurse practitioners, registered professional nurses, podia-  
55 trists, pharmacists, physicians, physical therapists, physician assist-  
56 ants, psychiatrists and occupational therapists.

(f) "professional continuing education" or "continuing education" shall mean all professional continuing education programs required either by state law or by professional associations authorized by the education department to monitor the requirements of licensure, and to conduct and approve professional continuing education requirements for a health care profession. Such professions shall include, but not be limited to, acupuncture, chiropractic, dentistry, nursing, podiatry, pharmacy, medicine, physical therapy, physician assistance, psychology and occupational therapy.

2. State chronic pain management education and training council. (a) The state chronic pain management education and training council is hereby established in the department to be an expert panel to advise the commissioner and commissioner of education on: (i) advances in the optimum treatment, management and best practices related to mitigating or alleviating chronic pain, (ii) to promote better interdisciplinary and coordinated provision of care related to chronic pain management, (iii) to develop new public policies related to advancing the teaching of such new treatments, management regimens, or best practices on chronic pain management and care in chronic pain care certified medical schools and chronic pain care certified residency programs, and (iv) develop guidelines to assist the education department in establishing materials and curricula to be used in providing professional continuing education programs for those health care professionals regulated by such department.

(b) The council shall be composed of twenty-five members appointed by the commissioner. The commissioner shall seek recommendations for appointments to such council from health care professional, consumer, medical institutional, medical educational leaders and other professional educational leaders from this state. The membership of the council shall include: nine representatives of medical schools and hospital organizations; two representatives of medical academies; one acupuncturist licensed pursuant to section eighty-two hundred fourteen of the education law; individual representatives of organizations broadly representative of physicians, family physicians, primary care physicians, internal medicine, rheumatology, nursing, gerontology, hospice, neurology, psychiatry, pediatrics, surgery, acupuncture, chiropractic care, podiatric care, pharmacists or those professionals related to the prescription or manufacture of pain medications, emergency room health care professionals, massage therapists, occupational and physical therapy, patient advocates and the hospital philanthropic community; health care plan payors or insurers; the executive director or a member of the New York state council on graduate medical education; and a member of the New York state palliative care education and training council.

(c) The members of the council shall have expertise in the treatment and management of chronic pain and the care of patients that are afflicted with chronic pain conditions. The term of such members shall be four years and such terms may be renewed. Members shall receive no compensation for their services, but shall be allowed actual and necessary expenses in the performance of their duties.

(d) A chair and vice-chair of the council shall be elected annually by the council. The council shall meet upon the call of the commissioner or the chair. The council may adopt regulations consistent with this section.

(e) The commissioner shall designate such employees and provide for other resources from the department as may be reasonably necessary to provide support and services for the work of the council. The council

1 may employ additional staff and consultants and incur other expenses to  
2 carry out its duties, to be paid for from amounts which may be made  
3 available to the council for that purpose.

4 (f) The council may provide technical information and guidance to  
5 health care professionals on the latest best practices, strategies,  
6 therapies and medications to treat or manage chronic pain. Further, to  
7 provide technical information and guidance to health care professionals  
8 to encourage better coordinated care to treat or mitigate the pain  
9 suffered by chronic pain patients.

10 3. Policies to be considered, examined and possibly advanced by the  
11 council. The council shall consider and examine the following policies  
12 and guidelines in the adoption of any rules and regulations:

13 (a) The treatment and care provided to patients that suffer chronic  
14 pain should be centered in the primary care environment and foster coor-  
15 ordinated care between the various health care professional disciplines.

16 (b) Chronic pain management and care should be coordinated to help  
17 minimize the dispensing of prescription drugs, avoid duplicative and  
18 costly evaluations and diagnostic tests, and treatments to minimize  
19 chronic pain.

20 (c) Development of chronic pain management and care techniques that  
21 address discrepancies that may occur in the treatment of patients based  
22 on race, ethnicity, gender, income level or age.

23 (d) Develop and promote the use of best practices to mitigate the  
24 suffering of chronic pain in patients. The utilization of such best  
25 practices can be promoted by: (i) the provision of professional continu-  
26 ing education programs to all health care professionals on advances in  
27 best practices in chronic pain management and care, and (ii) the devel-  
28 opment of advances in best practices based on new research, clinical  
29 experience, and the promotion of inter-disciplinary dialog and cooper-  
30 ation between the various health care professionals.

31 (e) Encourage the wider use of coordinated health information technol-  
32 ogy systems to track pain disorders, treatments, and outcomes as a mech-  
33 anism to improve chronic pain care and to better integrate coordinated  
34 care among the various treating health care professionals.

35 (f) Consider alterations in Medicaid and private payor reimbursement  
36 rates and practices to encourage more optimum provision of quality  
37 chronic pain management and care by all health care professionals.

38 (g) Encourage a balanced approach to regulate the distribution, use,  
39 and prescription of medications that are used to treat chronic pain  
40 conditions. Such balanced approach needs to ensure that patients can  
41 obtain the medications that they need, but are not over prescribed such  
42 medications, which can lead to patient abuse or long term addiction.  
43 Further, the need to monitor multiple daily medication prescription  
44 regimens, coupled with psychological, behavioral, and social inter-  
45 vention activities of such patients. Further, to reduce the threat of  
46 drug abuse, addiction or diversion of such medications to uses not  
47 related to proper treatment of chronic pain conditions.

48 4. Grants for undergraduate medical education in chronic pain treat-  
49 ment and management. (a) The commissioner is authorized, within amounts  
50 from any source appropriated or otherwise provided for such purpose, to  
51 make grants to chronic pain care certified medical schools and schools  
52 of health care professionals to enhance the study and research of chron-  
53 ic pain treatment and management, increase the opportunities for under-  
54 graduate medical education in chronic pain care treatment and manage-  
55 ment, and encourage the education of physicians in chronic pain care  
56 management and treatment.

(b) Grant proceeds under this subdivision may be used for faculty development in chronic pain care treatment and management; recruitment of faculty with an expertise in the management and treatment of chronic pain; costs incurred teaching medical students at hospital-based sites, non-hospital based ambulatory care settings, certified home health agencies, licensed long term home health care programs, private and public health care clinics, and in private physician practices including, but not limited to personnel, administration and student-related expenses; expansion or development of programs that train physicians in the treatment and management of chronic pain; and other innovative programs designed to increase the competency of medical students to provide chronic pain care to patients.

(c) Grants under this subdivision shall be awarded by the commissioner through a competitive application process to the council. The council shall make recommendations for funding to the commissioner.

5. Grants for graduate health care professional education in chronic pain treatment and management. (a) The commissioner is authorized, within amounts from any source appropriated or otherwise provided for such purpose, to make grants to chronic pain care certified residency programs to establish or expand education in chronic pain treatment and management for graduate medical education, and to increase the opportunities for trainee education in the treatment and management of chronic pain in the hospital-based and non-hospital-based settings.

(b) Grants under this subdivision for graduate health care professional education and education in chronic pain treatment and management may be used for administration, faculty recruitment and development; start-up costs and costs incurred teaching the most advanced strategies, therapies, medications or best practices with regard to the care of patients with chronic pain in either hospital-based or non-hospital based settings including, but not limited to personnel, administration and trainee related expenses; and other expenses deemed reasonable and necessary by the commissioner.

(c) Grants under this subdivision shall be awarded by the commissioner through a competitive application process to the council. The council shall make recommendations for funding to the commissioner.

6. Chronic pain health care professional practitioner resource centers. The commissioner, in consultation with the council, may designate a chronic pain treatment and management practitioner resource center or centers. Such resource center may be statewide or regional, and shall act as a source of technical support, information and guidance for practitioners on the latest strategies, therapies, medications or best practices with regard to the optimum treatment and management of chronic pain. The department, in consultation with the council, may contract with not-for-profit organizations or associations to establish and manage such resource centers. Such resource centers may charge a fee to help offset the cost of providing such services.

7. Continuing education requirements for health care professionals. The council, in consultation with the department, the education department and health care professional organizations, shall develop, compile and publish information and course materials on the advanced treatment and mitigation of chronic pain suffered by patients. In addition within two years of the effective date of this article, the council shall make recommendations to the education department for the course work, training and curriculum to be included in the continuing education on the best practices, strategies, therapies and approaches for the mitigation and treatment of chronic pain required to be completed by the various



1 health care professions pursuant to paragraph d of subdivision three of  
2 section sixty-five hundred seven of the education law. Such recommenda-  
3 tions shall include components which address the increasing and neces-  
4 sary interdisciplinary cooperation between health care professionals for  
5 the coordinated reduction of chronic pain in patients and the reduction  
6 of health care costs.

7 8. Report. On or before March first of each odd numbered year, the  
8 council shall submit to the governor, the commissioner, the commissioner  
9 of education, the temporary president of the senate, the speaker of the  
10 assembly, and the chairs of the senate and assembly committees on health  
11 a report on its activities and accomplishments relating to the treatment  
12 and mitigation of chronic pain. Such report may also include such legis-  
13 lative proposals as it deems necessary to more effectively implement the  
14 provisions of this article.

15 § 3. Paragraphs b and c of subdivision 3 of section 6507 of the educa-  
16 tion law, as added by chapter 987 of the laws of 1971, are amended and a  
17 new paragraph d is added to read as follows:

18 b. Review qualifications in connection with licensing requirements;  
19 [~~and~~]

20 c. Provide for licensing examinations and reexaminations[~~+~~]; and

21 d. (i) Establish standards for preprofessional and professional educa-  
22 tion for health care professionals, as defined in paragraph (e) of  
23 subdivision one of section twenty-eight hundred ninety-nine-k of the  
24 public health law, relating to the mitigation and treatment of chronic  
25 pain. In the promulgation of such standards, the department and the  
26 appropriate board of each such profession shall consider and, to the  
27 extent practicable, implement the recommendations of the state chronic  
28 pain management education and training council. Furthermore, such stand-  
29 ards shall provide for such training and coursework on the advanced  
30 treatment and mitigation of chronic pain as shall be appropriate for the  
31 health care profession, and shall address the increasing and necessary  
32 interdisciplinary cooperation between health care professionals for the  
33 coordinated reduction of chronic pain in patients and the reduction of  
34 health care costs.

35 (ii) The commissioner shall establish standards requiring that all  
36 health care professionals applying, on or after January first, two thou-  
37 sand twenty, initially or for a renewal of a license, registration or  
38 certificate pursuant to this title, shall, in addition to all other  
39 licensure, registration or certification requirements, have completed  
40 such coursework and training in the treatment and mitigation of chronic  
41 pain as shall be required pursuant to subparagraph (i) of this para-  
42 graph. The coursework and training shall be obtained from an institution  
43 or provider that has been approved by the department to provide such  
44 coursework and training. Each applicant shall provide the department  
45 with documentation showing he or she has completed the required train-  
46 ing.

47 (iii) The department shall provide an exemption from the requirements  
48 of subparagraphs (i) and (ii) of this paragraph to any health care  
49 professional who requests such an exemption and who demonstrates to the  
50 department's satisfaction that:

51 (A) there would be no need for him or her to complete such coursework  
52 and training because of the nature of his or her practice; or

53 (B) he or she has completed coursework and training deemed by the  
54 department to be equivalent to the standards for coursework and training  
55 approved by the department under this paragraph.

1     § 4. Subdivision 7 of section 2807-s of the public health law is  
2 amended by adding a new paragraph (d) to read as follows:

3     (d) notwithstanding any inconsistent provision of this section, prior  
4 to the allocation of funds for distribution in accordance with section  
5 twenty-eight hundred seven-j of this article pursuant to paragraphs (b)  
6 and (c) of this subdivision, the commissioner on an annualized basis up  
7 to two million five hundred thousand dollars for grants for undergradu-  
8 ate health care professional education in chronic pain treatment and  
9 management pursuant to subdivision four of section twenty-eight hundred  
10 ninety-nine-k of this chapter; and up to two million five hundred thou-  
11 sand dollars for grants for graduate health care professional education  
12 in chronic pain treatment and management pursuant to subdivision five of  
13 section twenty-eight hundred ninety-nine-k of this chapter.

14     § 5. This act shall take effect immediately provided that the amend-  
15 ments to subdivision 7 of section 2807-s of the public health law made  
16 by section four of this act shall not affect the expiration of such  
17 section and shall expire therewith.