STATE OF NEW YORK

1335

2021-2022 Regular Sessions

IN ASSEMBLY

January 8, 2021

Introduced by M. of A. L. ROSENTHAL, STECK, WEPRIN, LUPARDO -- read once and referred to the Committee on Higher Education

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:

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

Further, the current practice of the repeated utilization of different health practitioners, tests and unnecessary medical procedures to treat such chronic pain is resulting in higher health care costs. These increased costs come from unnecessary visits to health care practitioners, more and longer hospital stays, performing unnecessary surgeries or other medical procedures, and unnecessary prescription of costly and dangerous drugs. This inefficient use of valuable health care resources is contributing to the rapidly increasing cost of providing health care. With the continuing aging of New York's general population, this trend 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.

LBD00631-01-1

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

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

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

ARTICLE 28-F

CHRONIC PAIN MANAGEMENT

Section 2899-k. Chronic pain management.

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

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

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

(c) "chronic pain care certified residency program" shall mean a graduate medical education program in the state which has received accreditation from a nationally recognized accreditation body for medical or osteopathic residency programs, and which meets the standards established pursuant to regulations promulgated by the commissioner, after consultation with the council, that are used to determine whether a residency training program is eligible for funding pursuant to this section.

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

(e) "health care professionals" shall mean and include those health care professionals who regularly treat patients that have chronic pain, and includes, but is not limited to, acupuncturists, chiropractors, dentists, nurse practitioners, registered professional nurses, podiatrists, pharmacists, physicians, physical therapists, physician assistants, 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

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

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

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

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

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

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

(d) Develop and promote the use of best practices to mitigate the suffering of chronic pain in patients. The utilization of such best practices can be promoted by: (i) the provision of professional continuing education programs to all health care professionals on advances in best practices in chronic pain management and care, and (ii) the development of advances in best practices based on new research, clinical experience, and the promotion of inter-disciplinary dialog and cooperation between the various health care professionals.

(e) Encourage the wider use of coordinated health information technology systems to track pain disorders, treatments, and outcomes as a mechanism to improve chronic pain care and to better integrate coordinated care among the various treating health care professionals.

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

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

4. Grants for undergraduate medical 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 medical schools and schools of health care professionals to enhance the study and research of chronic pain treatment and management, increase the opportunities for undergraduate medical education in chronic pain care treatment and management, and encourage the education of physicians in chronic pain care 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

health care professions pursuant to paragraph d of subdivision three of section sixty-five hundred seven of the education law. Such recommendations shall include components which address the increasing and necessary interdisciplinary cooperation between health care professionals for the coordinated reduction of chronic pain in patients and the reduction of health care costs.

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

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

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

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

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

(ii) The commissioner shall establish standards requiring that all health care professionals applying, on or after January first, two thousand twenty-four, initially or for a renewal of a license, registration or certificate pursuant to this title, shall, in addition to all other licensure, registration or certification requirements, have completed such coursework and training in the treatment and mitigation of chronic pain as shall be required pursuant to subparagraph (i) of this paragraph. The coursework and training shall be obtained from an institution or provider that has been approved by the department to provide such coursework and training. Each applicant shall provide the department with documentation showing he or she has completed the required training.

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

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

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

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

(d) notwithstanding any inconsistent provision of this section, prior to the allocation of funds for distribution in accordance with section twenty-eight hundred seven-j of this article pursuant to paragraphs (b) and (c) of this subdivision, the commissioner on an annualized basis up to two million five hundred thousand dollars for grants for undergraduate health care professional education in chronic pain treatment and management pursuant to subdivision four of section twenty-eight hundred ninety-nine-k of this chapter; and up to two million five hundred thousand dollars for grants for graduate health care professional education in chronic pain treatment and management pursuant to subdivision five of section twenty-eight hundred ninety-nine-k of this chapter.

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