

By: Price

H.B. No. 2811

A BILL TO BE ENTITLED

AN ACT

relating to the prescribing of controlled substances and dangerous drugs for acute pain.

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

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 107A to read as follows:

CHAPTER 107A. ACUTE PAIN TREATMENT

Sec. 107A.001. DEFINITIONS. In this chapter:

(1) "Abuse" or "substance abuse" means the maladaptive pattern of substance use manifested by recurrent and significant adverse consequences related to the repeated use of controlled substances or other drugs.

(2) "Acute pain" means the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited. The term does not include:

(A) chronic pain;

(B) pain being treated as part of cancer care;

(C) pain being treated as part of hospice or other end-of-life care; or

(D) pain being treated as part of palliative care.

(3) "Addiction" means a primary, chronic, or neurobiological disease characterized by craving and compulsive

1 use of drugs. Addiction is often characterized by impaired control  
2 over drug use, including taking more drugs more often than  
3 prescribed by a physician. It may also be characterized by  
4 continued use despite harm to oneself or others. Genetic,  
5 psychosocial, and environmental factors may influence the  
6 development and manifestation of addiction. Physical dependence  
7 and tolerance are normal physiological consequences of extended  
8 drug therapy for pain and, alone, do not indicate addiction.

9           (4) "Chronic pain" means a state in which pain  
10 persists beyond the usual course of an acute disease or healing of  
11 an injury. Chronic pain may be associated with a chronic  
12 pathological process that causes continuous or intermittent pain  
13 over months or years.

14           (5) "Controlled substance" has the meaning assigned by  
15 Section 481.002, Health and Safety Code.

16           (6) "Dangerous drug" has the meaning assigned by  
17 Section 483.001, Health and Safety Code.

18           (7) "Diversion" means the use of drugs by anyone other  
19 than the person for whom the drug was prescribed.

20           (8) "Pain" means an unpleasant sensory and emotional  
21 experience associated with actual or potential tissue damage.

22           (9) "Physical dependence" means a state of adaptation  
23 that is manifested by drug class-specific signs and symptoms that  
24 can be produced by abrupt cessation, rapid dose reduction,  
25 decreasing blood level of the drug, or administration of an  
26 antagonist.

27           (10) "Practitioner" means a person, other than a

1 veterinarian, authorized to prescribe a controlled substance.

2 (11) "Tolerance" means a physiological state  
3 resulting from regular use of a drug in which an increased dosage is  
4 needed to produce a specific effect or in which a reduced effect is  
5 observed with a constant dose over time. Tolerance does not  
6 necessarily occur during opioid treatment and does not, alone,  
7 indicate addiction.

8 (12) "Withdrawal" means the physiological and mental  
9 readjustment that accompanies discontinuation of a drug for which a  
10 person has established a physical dependency.

11 Sec. 107A.002. EVALUATION OF PATIENT WITH ACUTE PAIN. (a)  
12 A practitioner's treatment of a patient's pain is evaluated by  
13 considering whether the treatment meets the generally accepted  
14 standard of care.

15 (b) A practitioner shall obtain a medical history and a  
16 physical examination that includes a problem-focused examination  
17 specific to the chief presenting complaint of the patient.

18 (c) The patient's medical record must document the medical  
19 history and physical examination. The medical record must document:

20 (1) the nature and intensity of the pain;

21 (2) any current and past treatments for the pain;

22 (3) any underlying or coexisting diseases and  
23 conditions;

24 (4) the effect of the pain on physical and  
25 psychological function;

26 (5) the patient's history and the potential for  
27 substance abuse or diversion; and

1           (6) the presence of one or more recognized medical  
2 indications for the use of a controlled substance or dangerous  
3 drug.

4           (d) Before prescribing a controlled substance or dangerous  
5 drug for the treatment of acute pain, a practitioner must review  
6 prescription data and history related to the patient under Section  
7 481.076, Health and Safety Code.

8           (e) If a practitioner determines that the steps under  
9 Subsection (d) are not necessary before prescribing a controlled  
10 substance or dangerous drug to the patient, the practitioner must  
11 document in the patient's medical record the practitioner's  
12 rationale for not completing the steps.

13           Sec. 107A.003. TREATMENT PLAN FOR ACUTE PAIN. The  
14 practitioner shall ensure that a written treatment plan is  
15 documented in the patient's medical record. The medical record must  
16 include:

17                   (1) the manner in which the medication relates to the  
18 chief presenting complaint of acute pain;

19                   (2) the dosage and frequency of any drugs prescribed;

20                   (3) any further testing and diagnostic evaluations to  
21 be ordered, if medically indicated;

22                   (4) any other treatments that are planned or  
23 considered;

24                   (5) any periodic reviews planned; and

25                   (6) the objectives that will be used to determine  
26 treatment success, such as pain relief and improved physical and  
27 psychosocial function.

1       Sec. 107A.004. INFORMED CONSENT. (a) The practitioner  
2 shall discuss the risks and benefits of the use of a controlled  
3 substance or dangerous drug for the treatment of acute pain with the  
4 patient, any persons designated by the patient, or the patient's  
5 surrogate or guardian if the patient may not give consent for the  
6 patient's medical treatment.

7       (b) The discussion must include:

8           (1) the risk of addiction associated with the drug  
9 prescribed, including any risk of developing an addiction or a  
10 physical or psychological dependence on the drug;

11           (2) the risk of taking the drug in a dosage greater  
12 than the dosage prescribed;

13           (3) the danger of taking the drug with  
14 benzodiazepines, alcohol, or other central nervous system  
15 depressants;

16           (4) the reasons why the prescription is necessary;

17           (5) any alternative drugs or nonpharmacological  
18 treatment modalities available for the acute pain;

19           (6) the responsibility of the patient to safeguard all  
20 drugs in a secure location; and

21           (7) methods for safely disposing of an unused portion  
22 of a controlled substance or dangerous drug prescription.

23       (c) The discussion of risks and benefits must also include  
24 an explanation of:

25           (1) the patient's diagnosis;

26           (2) the proposed treatment plan;

27           (3) any anticipated therapeutic results, including

1 realistic expectations for sustained pain relief and improved  
2 functioning and possibilities for lack of pain relief;

3 (4) therapies available in addition to or instead of  
4 drug therapy, including nonpharmacological therapeutic modalities  
5 or psychological techniques;

6 (5) potential side effects and techniques for managing  
7 the side effects;

8 (6) possible adverse effects, including the potential  
9 for tolerance and withdrawal; and

10 (7) the potential for impairment of judgment and motor  
11 skills.

12 (d) The discussion under this section must be documented by  
13 a signed document maintained in the records or a contemporaneous  
14 notation included in the patient's medical record.

15 (e) Each regulatory agency that issues a license,  
16 certification, or registration to a practitioner shall create  
17 specific written guidelines for discussing with a patient the risks  
18 and benefits of the use of a controlled substance or dangerous drug.

19 Sec. 107A.005. PERIODIC REVIEW OF TREATMENT OF ACUTE PAIN.

20 (a) If needed the practitioner shall see the patient for periodic  
21 review at reasonable intervals. The practitioner shall review the  
22 patient's compliance with the prescribed treatment plan and shall  
23 reevaluate potential for substance abuse or diversion. The  
24 practitioner shall consider:

25 (1) reviewing prescription data and history related to  
26 the patient under Section 481.076, Health and Safety Code; and

27 (2) obtaining at a minimum a toxicology drug screen to

1 determine the presence of drugs in the patient's body.

2 (b) If a practitioner determines that the steps under  
3 Subsection (a) are not necessary, the practitioner shall document  
4 in the patient's medical record the practitioner's rationale for  
5 not completing the steps.

6 (c) The periodic review must:

7 (1) assess progress toward reaching treatment  
8 objectives, taking into consideration the history of drug usage, as  
9 well as any new information about the etiology of the pain;

10 (2) be documented in the medical record; and

11 (3) note contemporaneously in the medical record any  
12 adjustment in the treatment plan based on the individual medical  
13 needs of the patient.

14 (d) A practitioner must base any continuation or  
15 modification of the use of a controlled substance or dangerous drug  
16 for pain management on an evaluation of progress toward treatment  
17 objectives, including:

18 (1) progress or the lack of progress in relieving pain  
19 documented in the patient's medical record;

20 (2) satisfactory response to treatment that may be  
21 indicated by the patient's:

22 (A) decreased pain;

23 (B) increased level of function; or

24 (C) improved quality of life; and

25 (3) objective evidence of improved or diminished  
26 function provided by:

27 (A) the practitioner; or

1                   (B) family members or other caregivers.

2           (e) If the patient's progress is unsatisfactory, the  
3 practitioner shall reassess the current treatment plan and consider  
4 the use of other nonpharmacological therapeutic modalities.

5           Sec. 107A.006. CONSULTATION AND REFERRAL. The practitioner  
6 shall refer a patient with acute pain for further evaluation and  
7 treatment as necessary. Patients who are at risk for substance  
8 abuse or addiction and patients with acute pain and histories of  
9 substance abuse or addiction or with comorbid psychiatric disorders  
10 require the consideration of a consultation with or referral to an  
11 expert in the management of those patients.

12           Sec. 107A.007. MEDICAL RECORD. A patient's medical record  
13 must document the practitioner's rationale for the treatment plan  
14 and the prescription of drugs for the chief complaint of acute pain  
15 and show that the practitioner has complied with this chapter. The  
16 medical record must document:

- 17                   (1) the medical history and the physical examination;  
18                   (2) diagnostic, therapeutic, and laboratory results;  
19                   (3) evaluations and consultations;  
20                   (4) treatment objectives;  
21                   (5) discussions of risks and benefits;  
22                   (6) informed consent for the patient;  
23                   (7) treatments;  
24                   (8) the date, type, dosage, and quantity of drugs  
25 prescribed;

26                   (9) instructions to and agreements with the patient;

27 and



1                   (10) periodic reviews.

2                   SECTION 2. The change in law made by this Act applies only  
3 to a prescription issued on or after the effective date of this Act.  
4 A prescription issued before the effective date of this Act is  
5 governed by the law in effect on the date the prescription is  
6 issued, and the former law is continued in effect for that purpose.

7                   SECTION 3. This Act takes effect September 1, 2019.