CHAPTER 213
HB 1423-FN - FINAL VERSION

2016 SESSION

HOUSE BILL 1423-FN

AN ACT relative to rulemaking for prescribing controlled drugs.


COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill requires the board of medicine, the board of dental examiners, the board of nursing, the board of registration in optometry, the board of podiatry, the naturopathic board of examiners, and the board of veterinary medicine to adopt rules for prescribing controlled drugs. This bill contains mandatory standards for such rules and requires using the controlled drug prescription health and safety program database.

Explanation: Matter added to current law appears in bold italics. Matter removed from current law appears [in brackets and struckthrough.] Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to rulemaking for prescribing controlled drugs.

Be it Enacted by the Senate and House of Representatives in General Court convened:

213:1 New Section; Rulemaking for Prescribing Controlled Drugs; Controlled Drug Prescription Health and Safety Program. Amend RSA 318-B by inserting after section 40 the following new section:

318-B:41 Rulemaking for Prescribing Controlled Drugs.

I. Before September 1, 2016, the following boards shall submit to the joint legislative committee on administrative rules final proposed rules for prescribing schedule II, III, and IV opioids, for the management or treatment of pain:

1. The board of medicine, concerning physicians and physician assistants.
2. The board of dental examiners, concerning dentists.
3. The board of nursing, concerning advanced practice registered nurses.
4. The board of registration in optometry, concerning optometrists.
5. The board of registration in podiatry, concerning podiatrists.
6. The naturopathic board of examiners, concerning naturopaths.

II. The rules shall, at a minimum, contain mandatory standards for the practice components established in paragraph II.

(a) Standards for the use of opioids for the management or treatment of all pain:

1. Conducting and documenting a detailed history and a physical exam in response to a complaint of pain or anticipated pain.
2. Completing a board-approved risk assessment tool to determine whether a patient is an appropriate candidate for a schedule II, III, or IV opioid.
3. Establishing and documenting an appropriate pain treatment plan that includes consideration of nonpharmacological modalities and non-opioid therapy.
4. Querying the program database when writing an initial schedule II, III, or IV opioid prescription for the management or treatment of a patient’s pain and then periodically, at least twice a year. Such rules shall include exceptions for:
   (i) Controlled substances administered to a patient in a health care setting;
   (ii) The program is inaccessible or not functioning properly, due to an internal or external electronic issue; or
(iii) An emergency department is experiencing a higher than normal patient volume, and to query the program database would materially delay care.

(B) When a situation falling under exception (A)(ii) or (iii) is applicable, such exception shall be documented in the patient’s medical record.

(5) Establishing procedures for informed consent outlining the risks and benefits of opioid use.

(6) Requiring the lowest effective dosage for the fewest number of days with specific dose limits be prescribed for a medical condition or specialty.

(7) Providing for the enforcement of the prescribing rules by specifying that noncompliance with the rules may constitute unprofessional conduct under the board’s practice act.

(b) Standards for the use of opioids for the management or treatment of acute pain:

(1) Limiting the amount of days for an opioid prescription issued in an emergency department, urgent care setting, or walk-in clinic. This specific duration limit shall be set by each board no later than August 1, 2016 taking into consideration the recommendation from a majority vote of a policy group consisting of the chief medical officer of the department of health and human services, a physician designated by the New Hampshire chapter of the American College of Emergency Physicians, a physician designated by the New Hampshire Hospital Association, an advanced practice registered nurse designated by the New Hampshire Nurse Practitioner Association, a physician or advanced practice registered nurse designated by the governor, a board certified surgeon designated by the New Hampshire Medical Society, and an oral surgeon designated by the New Hampshire Dental Society. Five members of the policy group shall constitute a quorum. All policy group meetings shall be open to the public and noticed in the house and senate calendars.

(2) In settings where continuity of care is anticipated, each board shall establish finite limits considering dose and duration of opioid prescriptions for treatment of acute pain and appropriate timing of office follow up for persistent, unresolved acute pain.

(c) Standards for the use of opioids for the management or treatment of chronic pain:

(1) Mandatory use of written treatment agreements, such as the agreement developed by the American Academy of Pain Medicine. Treatment agreements shall include conduct that triggers the discontinuation or tapering of opioid prescriptions.

(2) Establishing a requirement for periodic review conducted at reasonable intervals to reevaluate treatment plans and use of opioids.

(3) Establishing a procedure for, and documenting consideration of, consultation with, or referral to a specialist for patients receiving a high morphine equivalent dose for longer than 90 days.

(4) Creating exemptions to the prescribing rules for situations in which an opioid is being prescribed for the management of chronic pain for:
(A) Patients with cancer pain;

(B) Patients with a terminal condition;

(C) Long-term, nonrehabilitative, residents of a nursing home facility.

III. Before September 1, 2016, the board of veterinary medicine shall submit to the joint legislative committee on administrative rules final proposed rules for prescribing schedule II, III, and IV opioids by veterinarians for the management or treatment of pain. For the practice components set forth in paragraph IV, the term “patient” refers to the animal being prescribed opioids for the management or treatment of pain, and the term “owner” refers to the owner of the animal with whom the veterinarian client patient relationship (VCPR) has been established.

IV. The prescribing rules required by paragraph III shall, at a minimum, contain mandatory standards for the following practice components.

(a) Standards for the use of opioids for the management or treatment of pain:

(1) Conducting and documenting a detailed history and a physical exam in response to a complaint of pain or anticipated pain.

(2) Completing a board-approved risk assessment tool to determine whether a patient is an appropriate candidate for a schedule II, III, or IV opioid.

(3) Establishing and documenting an appropriate pain treatment plan that includes consideration of nonpharmacological modalities and non-opioid therapy.

(4)(A) Querying the program database when writing an initial schedule II, III, or IV opioid prescription for the management or treatment of a patient's pain and then periodically, at least twice a year. The program shall be queried for the patient and its owner. Exceptions to this requirement shall be limited to situations in which:

(i) Controlled substances are to be administered to a patient in a health care setting.

(ii) The program is inaccessible or not functioning properly, due to an internal or external electronic issue.

(B) For exception (ii), the specific reason why there was no query of the program database shall be documented in the patient’s medical record.

(5) Establishing procedures for informed consent outlining the risks and benefits of opioid use and for the requirements regarding querying the program database pursuant to subparagraph (4)(A).

(6) Requiring the lowest effective dosage for the fewest number of days with specific dose limits, if appropriate, be prescribed for a medical condition or specialty.

(7) Providing for the enforcement of the prescribing rules by specifying that noncompliance with the rules may constitute unprofessional conduct under the board’s practice act.

(b) Standards for the use of opioids for the management or treatment of acute pain:

(1) Limiting the amount of days for an opioid prescription issued in an emergency
care setting. The board shall base its recommendation on the limit established pursuant to paragraph II(b)(1).

(2) In settings where continuity of care is anticipated, establishing finite limits on dose and duration of opioid prescriptions for treatment of acute pain and appropriate timing of office follow up for persistent, unresolved acute pain.

(c) Standards for the use of opioids in the management or treatment of chronic pain.

(1) Mandatory use of written treatment agreements, such as the agreement developed by the American Academy of Pain Medicine. Treatment agreements shall include conduct that triggers the discontinuation or tapering of opioid prescriptions.

(2) Establishing a requirement for periodic review conducted at reasonable intervals to reevaluate treatment plans and use of opioids.

V. At a minimum, each board's Internet website shall include online links to board approved:

(a) Continuing education on the prescribing of opioids.

(b) Screening tools.

(c) Treatment agreements.

(d) Risks and benefits of opioid use.

(e) Proper storage of opioids.

(f) Proper disposal of unused opioids.

213:2 New Paragraph; Board of Medicine; Rulemaking; Rules for Prescribing Controlled Drugs. Amend RSA 329:9 by inserting after paragraph XIX the following new paragraph:

XX. Prescribing controlled drugs pursuant to RSA 318-B:41.

213:3 Board of Dental Examiners; Rulemaking; Rules for Prescribing Controlled Drugs. Amend RSA 317-A:12, XII-c and XIII to read as follows:

XII-c. Notwithstanding any other provision of law, rules, as the board deems necessary, relative to qualified dental assistants performing coronal polishing. Such rules shall not authorize a qualified dental assistant to perform a complete oral prophylaxis; [and]

XIII. **Prescribing controlled drugs pursuant to RSA 318-B:41; and**

XIV. Other matters related to the proper administration of this chapter.

213:4 New Paragraph; Board of Nursing; Rulemaking; Rules for Prescribing Controlled Drugs. Amend RSA 326-B:9 by inserting after paragraph XI the following new paragraph:

XII. Prescribing controlled drugs pursuant to RSA 318-B:41.

213:5 New Paragraph; Board of Registration in Optometry; Rulemaking; Prescribing Rules for Controlled Drugs. Amend RSA 327:31 by inserting after paragraph IX the following new paragraph:

X. Prescribing controlled drugs pursuant to RSA 318-B:41.

213:6 New Paragraph; Board of Podiatry; Rulemaking; Prescribing Rules for Controlled Drugs.
Amend RSA 315:4 by inserting after paragraph XI the following new paragraph:

XII. Prescribing controlled drugs pursuant to RSA 318-B:41.

Amend RSA 328-E:10, I(e) to read as follows:

(e) Prescribing controlled drugs pursuant to RSA 318-B:41.

(f) Any other rules which are necessary or proper for the administration of this chapter.

Amend RSA 332-B:7-a by inserting after paragraph XIV the following new paragraph:

XV. Prescribing controlled drugs pursuant to RSA 318-B:41.

Amend RSA 318-B:39, relative to prescribers required to query the program prior to prescribing controlled substances, is repealed.

Contingency. RSA 318-B:41, II(a)(4), RSA 318-B:41, IV(a)(4), and section 9 of this act shall take effect 90 days after the director of the controlled drug prescription health and safety program, established under RSA 318-B:32, hereinafter "program", posts a notice on the home page of the program's Internet website that the necessary upgrades to the program have been completed, tested, and deemed operational. This posting shall occur no later than October 3, 2016. The October 3, 2016 deadline for posting may be extended by the governor, with the advice of the council, to a date certain, upon receipt of notice from the director of the program that the necessary upgrades cannot be completed, tested, and deemed operational in sufficient time to meet the October 3, 2016 posting deadline. The director of the program shall post the new deadline on the home page of the program's Internet website including the later notice of completion, testing, and operational status of the program.

Effective Date.

I. RSA 318-B:41, II(a)(4), RSA 318-B:41, IV(a)(4), and section 9 of this act shall take effect as provided in section 10 of this act.

II. The remainder of this act shall take effect upon its passage.

Approved: June 7, 2016

Effective Date: I. RSA 318-B:41, II(a)(4), RSA 318-B:41, IV(a)(4), and section 9 of this act shall take effect as provided in section 10.

II. Remainder shall take effect June 7, 2016