

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1501

H.P. 1102

House of Representatives, April 20, 2011

An Act To Reduce Opioid Overprescription, Overuse and Abuse

Received by the Clerk of the House on April 15, 2011. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative HINCK of Portland.
Cosponsored by Senator CRAVEN of Androscoggin and
Representatives: EVES of North Berwick, FOSSEL of Alna, HASKELL of Portland,
LUCHINI of Ellsworth, McFADDEN of Dennysville, PLUMMER of Windham, SANBORN
of Gorham, STRANG BURGESS of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA c. 255-A** is enacted to read:

3 **CHAPTER 255-A**

4 **OPIOID PRESCRIPTION FOR CHRONIC NONCANCER PAIN**

5 **§1411. Treatment of chronic noncancer pain**

6 This section applies to the prescribing of opioid drugs for chronic noncancer pain.
7 This section does not apply to the prescribing of opioid drugs for the management of
8 acute pain or for the provision of palliative care, hospice care or other end-of-life care.

9 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
10 following terms have the following meanings.

11 A. "Acute pain" means the normal, predicted physiological response to a noxious
12 chemical, thermal or mechanical stimulus, generally limited in time to less than 6
13 months and typically associated with invasive medical procedures, trauma or disease.

14 B. "Addiction" means a primary, chronic, neurobiological disease with genetic,
15 psychosocial and environmental factors influencing its development and
16 manifestations that is characterized by behaviors that include impaired control over
17 drug use, craving and compulsive use that is continued despite the risk of harm.

18 C. "Chronic noncancer pain" means pain that is not the result of the disease of cancer
19 or its manifestations and that persists beyond the usual course of recovery from an
20 illness or healing from an injury or pain that causes continuous or intermittent pain
21 over many months or years.

22 D. "Comorbidity" means a preexisting or coexisting physical or psychiatric disease
23 or condition.

24 E. "Health care provider" or "provider" means a provider of health care who is
25 licensed by the State and who is authorized to prescribe drugs by the State and by the
26 United States Department of Justice, Drug Enforcement Administration.

27 F. "Hospice care" means a model of care that focuses on relieving symptoms and
28 supporting patients with a life expectancy of 6 months or less and that is provided
29 through a multidisciplinary approach to health care, pain management and emotional
30 and spiritual support.

31 G. "Opioid drug" means a drug that binds to opioid receptors found principally in the
32 central nervous system and gastrointestinal tract.

33 H. "Pain management specialist" means:

34 (1) A physician who is board certified or board eligible in physical medicine,
35 rehabilitation, rehabilitation medicine, neurology, rheumatology or
36 anesthesiology, has a subspecialty certificate in pain medicine from the
37 appropriate allopathic medical board or has a certification of added qualification
38 in pain management from the appropriate osteopathic medical board. For the

1 purposes of this subparagraph, "board" for an allopathic physician means the
2 American Board of Medical Specialties or its successor and for an osteopathic
3 physician means the American Osteopathic Association or its successor; or

4 (2) An advanced practice registered nurse who:

5 (a) Has at least 3 years of clinical experience in a chronic pain management
6 care setting;

7 (b) Is credentialed in a specialty that includes a focus on chronic noncancer
8 pain management by a national professional association in the field of pain
9 management or quality assurance;

10 (c) Has successfully completed in the last 2 years at least 18 hours of
11 continuing education in pain management; and

12 (d) Devotes at least 30% of the advanced practice registered nurse's current
13 practice to the direct provision of pain management care.

14 I. "Palliative care" means a model of care that improves the quality of life of a
15 patient who suffers from a life-threatening illness and the quality of life of the
16 patient's family with an emphasis on psychological, spiritual and emotional support
17 through attention to prevention, assessment and treatment of pain and other
18 symptoms.

19 **2. Requirements.** The following requirements apply to the prescribing of opioid
20 drugs for a patient with chronic noncancer pain.

21 A. Prior to prescribing an opioid drug for chronic noncancer pain, a health care
22 provider shall obtain, evaluate and document in the patient's health record the
23 patient's health history, including but not limited to current and past treatments for
24 pain, comorbidities, substance use and abuse and a review of information available
25 from a pharmacist and from the Controlled Substances Prescription Monitoring
26 Program under section 7248, and shall perform a physical examination.

27 (1) In performing the physical examination and evaluating the patient's health
28 history, the health care provider shall evaluate the nature and intensity of the
29 reported pain and the effect of the pain on physical and psychological function.

30 (2) The health care provider shall review available diagnostic, therapeutic and
31 laboratory results and consultations. The health care provider shall evaluate
32 medications taken by the patient, including indications, date, type, dosage and
33 quantity prescribed, and shall screen the patient for risk for potential
34 comorbidities using an appropriate screening tool that addresses:

35 (a) History of addiction;

36 (b) Abuse or aberrant behavior regarding opioid use;

37 (c) Psychiatric conditions;

38 (d) Regular concomitant use of alcohol or benzodiazepines or other central
39 nervous system medications;

40 (e) Poorly controlled depression or anxiety;

- 1 (f) Evidence or risk of significant adverse events, including falls or fractures;
- 2 (g) History of sleep apnea or other respiratory risk factors;
- 3 (h) History of allergies or intolerances to prescription and nonprescription
- 4 drugs, foods and environmental factors;
- 5 (i) Pregnancy and the possibility of pregnancy;
- 6 (j) Repeated visits to emergency departments in hospitals seeking access to
- 7 opioid drugs; and
- 8 (k) Receipt of prescriptions for opioid drugs from more than one health care
- 9 provider or provider group.

10 (3) The health care provider shall maintain a health record that is easily
11 accessible and available for review that includes the health care provider's
12 diagnosis and the treatment plan required under subparagraph (4), documentation
13 of any recognized indications for the use of pain medications, documentation of
14 medications prescribed, results of periodic reviews, documentation of the health
15 care provider's instructions to the patient and a copy of the written agreement
16 between the health care provider and the patient under paragraph D, if applicable.

17 (4) The health care provider shall develop and maintain a treatment plan for the
18 patient that states the objectives of the treatment to be provided and that will be
19 used to determine treatment success. The treatment plan must be used to
20 document any relief from pain, any change in physical and psychosocial function
21 and any additional diagnostic evaluations and other planned treatments. The
22 treatment plan must include any additional treatment modalities or rehabilitation
23 programs as appropriate for the patient, depending on the etiology of the pain and
24 the extent to which the pain is associated with physical and psychosocial
25 impairment.

26 B. Prior to prescribing an opioid drug for chronic noncancer pain, a health care
27 provider shall discuss the risks and benefits of treatment options with the patient. If
28 the patient designates another person to speak with the health care provider or if the
29 patient lacks health care decision-making capacity, the health care provider shall
30 conduct this discussion of risks and benefits with the person designated by the patient
31 or with the patient's guardian or surrogate.

32 C. A health care provider may not knowingly prescribe an opioid drug for chronic
33 noncancer pain for a patient who is under the care of another health care provider and
34 who has received a prescription for an opioid drug from that health care provider
35 except in instances of emergency care or where a health care provider is covering for
36 or assisting the prescribing provider or there has been a transfer of care.

37 D. A health care provider may prescribe an opioid drug for chronic noncancer pain
38 for a patient who has a history of substance abuse or psychiatric comorbidities or who
39 is judged by the health care provider to be at high risk for medication abuse if, prior
40 to the issuance of the prescription, the health care provider and patient enter into a
41 written agreement for treatment as provided in this paragraph.

- 1 (1) The health care provider must commit to providing urine or serum screening
2 on an ongoing basis during the course of treatment.
- 3 (2) The patient must commit to:
- 4 (a) Undergoing urine or serum screening on an ongoing basis during the
5 course of treatment;
- 6 (b) Taking the opioid drug at the prescribed dose and frequency and
7 following a specified protocol for lost prescriptions and early refills;
- 8 (c) Not abusing alcohol or other medically unauthorized substances;
- 9 (d) Agreeing to the release of the agreement for treatment to hospital
10 emergency departments, urgent care facilities and pharmacies and other
11 health care providers for treatment purposes, to other health care providers to
12 report a violation of the agreement and to law enforcement if the health care
13 provider reasonably believes that the patient has engaged in illegal activities;
14 and
- 15 (e) Taking responsibility for the security of the opioid drug, safeguarding it
16 and storing it in a safe place.
- 17 (3) The agreement must specify that:
- 18 (a) All chronic pain management prescriptions must be written by a single
19 health care provider and dispensed by a specific named pharmacy, except
20 that the patient may notify the health care provider and change to a new
21 pharmacy;
- 22 (b) Photographic identification is required and a record must be kept of the
23 person picking up the opioid drug at the pharmacy; and
- 24 (c) The agreed-upon drug therapy must be tapered off or discontinued if the
25 patient fails to abide by the terms of the agreement and that the reason for the
26 tapering off or termination must be entered into the patient's health record
27 and treatment plan under paragraph A.
- 28 E. A health care provider who prescribes an opioid drug for chronic noncancer pain
29 shall conduct periodic reviews of the patient's health, the course of treatment and any
30 new etiology of the pain as provided in this paragraph.
- 31 (1) Except as provided in subparagraph (2), periodic review must take place at
32 least every 6 months.
- 33 (2) For patients with a stable medical condition and nonescalating dosages of 40
34 milligrams of a morphine equivalent dose or less, periodic review must take place
35 at least annually.
- 36 (3) During the periodic review, the health care provider shall determine the
37 patient's compliance with the treatment plan under paragraph A, based on
38 information available to the health care provider, including whether pain,
39 function or quality of life has improved or diminished under the course of
40 treatment, and, based on the health care provider's evaluation of progress,

1 whether continuation or modification of the opioid drug is necessary to achieve
2 treatment objectives.

3 (4) If the patient's progress or compliance with the treatment plan is
4 unsatisfactory to the health care provider, the provider shall consider tapering the
5 dose or changing or discontinuing the prescribed drug when function or pain has
6 not improved, there is evidence of significant adverse effects, other treatment
7 modalities are indicated or there is evidence of misuse, addiction or diversion.

8 (5) If the health care provider determines it to be appropriate for the patient,
9 based on information that the provider obtains in the course of treatment or
10 during the periodic review, the provider shall adjust the drug therapy.

11 F. A health care provider who prescribes an opioid drug for chronic noncancer pain
12 shall include indications for medical use on the prescription and shall require
13 photographic identification of the person picking up the prescription drug at the
14 pharmacy.

15 G. A health care provider who prescribes an opioid drug for chronic noncancer pain
16 shall periodically review available information relating to the patient from
17 pharmacists, hospital emergency departments and the Controlled Substances
18 Prescription Monitoring Program established under section 7248.

19 H. A health care provider may prescribe opioid drugs for episodic care such as
20 emergency or urgent care in accordance with this paragraph.

21 (1) The health care provider shall review any available information relating to
22 the patient from a pharmacist, a hospital emergency department or the Controlled
23 Substances Prescription Monitoring Program established under section 7248.

24 (2) The health care provider shall limit the prescription of opioid drugs for
25 chronic noncancer pain to the minimum necessary to control the pain until the
26 patient is able to receive care from a primary care health care provider.

27 (3) The health care provider shall include in the prescription indications for use
28 or the code of a recognized international classification of disease and shall
29 require photographic identification of the person picking up the opioid drug at the
30 pharmacy.

31 (4) Except during treatment in an emergency room or urgent care center, prior to
32 the health care provider's prescribing the opioid drug, the health care provider
33 and patient shall enter into an agreement for treatment as provided in paragraph
34 D. A health care provider who prescribes opioid drugs in an emergency room or
35 urgent care center shall whenever possible communicate facts and circumstances
36 of the opioid treatment to the patient's primary care physician.

37 I. Referrals to pain management specialists are subject to the provisions of this
38 paragraph.

39 (1) Prior to prescribing an opioid drug for chronic noncancer pain, a health care
40 provider may refer a patient to a pain management specialist for a consultation
41 consisting of an office visit in person by the patient to the pain management
42 specialist or a consultation by audio-visual electronic means if the patient is

1 accompanied by a health care provider and a telephone consultation between the
2 pain management specialist and the health care provider or the electronic transfer
3 between them of information resulting from the consultation.

4 (2) Prior to prescribing the opioid drug, a health care provider shall refer a
5 patient to a pain management specialist for a consultation if the provider is
6 considering prescribing an opioid drug at or above 120 milligrams of a morphine
7 equivalent dosage per day unless an exemption provided in paragraph K or L
8 applies. The health care provider who refers a patient for a consultation under
9 this subparagraph shall document the referral in the patient's health record and
10 shall include in the record any written report from the pain management
11 specialist. A pain management specialist who provides a consultation for a
12 health care provider under this subparagraph shall maintain a health record for
13 the patient and document the consultation in that record.

14 (3) Prior to prescribing the opioid drug, a health care provider shall consider
15 referring a patient to a pain management specialist for a consultation if the patient
16 is under 18 years of age or is at risk for medication misuse, abuse or diversion.

17 (4) Nothing in this paragraph restricts the right of a person, the State, a
18 municipality, a corporation or other entity to require consultation with a pain
19 management specialist prior to the prescribing of an opioid drug for chronic
20 noncancer pain.

21 J. A health care provider may prescribe a long-acting opioid drug, including but not
22 limited to methadone, for chronic noncancer pain only if the provider has completed
23 at least 4 hours of continuing education related to prescription drug treatments for
24 chronic noncancer pain, undertakes the necessary careful monitoring of the patient
25 and gives special attention to patients who are initiating the treatment.

26 K. Consultation under paragraph I, subparagraph (2) is not required if all of the other
27 requirements of this section are met and if:

28 (1) The patient is following a tapering dosage schedule;

29 (2) The patient requires treatment for acute pain, requiring a temporary
30 escalation in opioid dosage with expected return to the baseline dosage or below
31 that dosage;

32 (3) The circumstances justify prescribing at or above the 120-milligram
33 morphine equivalent dosage and the health care provider documents reasonable
34 attempts to obtain a consultation; or

35 (4) The health care provider documents that the patient's pain and function are
36 stable and that the patient is on a nonescalating dosage of opioid drugs.

37 L. Consultation under paragraph I, subparagraph (2) is not required if the health care
38 provider:

39 (1) Is a pain management specialist;

40 (2) Has successfully completed within the last 2 years at least 12 hours of
41 continuing education on chronic pain management approved by a nationally

1 recognized professional organization on pain management with at least 2 hours
2 devoted to long-acting opioids, including methadone;

3 (3) Is a pain management practitioner working in a multidisciplinary chronic
4 pain treatment center or an academic research facility; or

5 (4) Has at least 3 years of clinical experience in a chronic pain management
6 setting and devotes at least 30% of the health care provider's practice to the direct
7 provision of pain management care.

8 **Sec. 2. Review.** The Department of Health and Human Services shall review and
9 evaluate the efficacy of comprehensive pain management, including physical therapy and
10 cognitive behavioral therapy, and report back to the Joint Standing Committee on Health
11 and Human Services no later than December 7, 2011.

12 SUMMARY

13 This bill establishes protocols for the health care provider community to follow in
14 prescribing opioid drugs for chronic noncancer pain. It includes provisions on physical
15 examinations, health records, periodic review of patient health and consultations with and
16 referrals to pain management specialists. It requires the Department of Health and Human
17 Services to review and evaluate the efficacy of comprehensive pain management,
18 including physical therapy and cognitive behavioral therapy, and report back to the Joint
19 Standing Committee on Health and Human Services no later than December 7, 2011.