

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0797.01 Kristen Forrestal x4217

SENATE BILL 23-144

SENATE SPONSORSHIP

Ginal, Marchman

HOUSE SPONSORSHIP

Mabrey,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING PRESCRIPTION DRUGS FOR THE TREATMENT OF CHRONIC**

102 **PAIN.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill allows a health-care provider to prescribe, dispense, or administer a schedule II, III, IV, or V controlled substance (drug) to a patient in the course of treatment for a diagnosed condition that causes chronic pain. The bill also clarifies that the prescribing health-care provider is not subject to disciplinary action by the appropriate regulator for prescribing a dosage of a drug that is equal to or more than a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

SENATE
Amended 2nd Reading
March 7, 2023

morphine milligram equivalent dosage recommendation or threshold specified in state or federal opioid prescribing guidelines or policies.

The bill prohibits a health-care provider from refusing to accept or continue to treat a patient solely on the basis of the dosage of a drug the patient requires for the treatment of chronic pain. A health-care provider is also prohibited from tapering a needed dosage solely to meet a predetermined dosage recommendation.

The bill also prohibits a pharmacist, health insurance carrier, or pharmacy benefit manager from refusing to fill or approve the coverage for a drug solely on the basis of the dosage requirement of a patient.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 12-30-109.5 as
3 follows:

4 **12-30-109.5. Prescription drugs for treatment of chronic pain**

5 **- patients - prescribers - definitions.** (1) AS USED IN THIS SECTION,
6 UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "CARRIER" HAS THE SAME MEANING AS SET FORTH IN
8 10-16-102 (8).

9 (b) (I) "CHRONIC PAIN" MEANS A PAIN THAT TYPICALLY LASTS
10 THREE MONTHS OR LONGER AND MAY BE THE RESULT OF AN UNDERLYING
11 MEDICAL DISEASE OR CONDITION, INJURY, MEDICAL TREATMENT,
12 INFLAMMATION, OR UNKNOWN CAUSE. "CHRONIC PAIN" IS A PAIN STATE
13 IN WHICH THE CAUSE OF THE PAIN OFTEN CANNOT BE REMOVED WITH
14 REASONABLE MEDICAL EFFORTS AT THE CONSENT OF THE PATIENT, OR PAIN
15 FOR WHICH NO CURE CAN BE FOUND AFTER REASONABLE MEDICAL
16 EFFORTS. CHRONIC PAIN MAY RESTRICT THE ABILITY OF INDIVIDUALS TO
17 WORK, CARE FOR THEMSELVES, AND ENGAGE IN BASIC LIFE, SOCIAL, AND
18 PHYSICAL ACTIVITIES.

19 (II) CONDITIONS ASSOCIATED WITH CHRONIC PAIN MAY INCLUDE,
20 BUT ARE NOT LIMITED TO, CANCER AND THE RECOVERY PERIOD, SICKLE

1 CELL DISEASE, NONCANCER PAIN, RARE DISEASES, SEVERE INJURIES, AND
2 HEALTH CONDITIONS REQUIRING THE PROVISION OF PALLIATIVE CARE OR
3 HOSPICE CARE.

4 (III) REASONABLE EFFORTS FOR RELIEVING OR CURING THE CAUSE
5 OF THE CHRONIC PAIN MAY BE DETERMINED ON THE BASIS OF, BUT ARE NOT
6 LIMITED TO, THE FOLLOWING:

7 (A) WHEN TREATING A NONTERMINALLY ILL PATIENT FOR CHRONIC
8 PAIN, AN EVALUATION CONDUCTED BY THE TREATING HEALTH-CARE
9 PROVIDER OR A HEALTH-CARE PROVIDER SPECIALIZING IN PAIN MEDICINE
10 OR TREATMENT OF THE AREA, SYSTEM, OR ORGAN OF THE BODY
11 CONFIRMED OR PERCEIVED AS THE SOURCE OF THE CHRONIC PAIN; OR

12 (B) WHEN TREATING A TERMINALLY ILL PATIENT, AN EVALUATION
13 CONDUCTED BY THE TREATING HEALTH-CARE PROVIDER WHO CONDUCTS
14 THE EVALUATION IN ACCORDANCE WITH THE STANDARD OF CARE AND THE
15 LEVEL OF CARE, SKILL, AND TREATMENT THAT WOULD BE RECOGNIZED BY
16 A HEALTH-CARE PROVIDER UNDER SIMILAR CONDITIONS AND
17 CIRCUMSTANCES.

18 (c) "DRUG DIVERSION" MEANS THE UNLAWFUL TRANSFER OF
19 PRESCRIPTION DRUGS FROM A LICIT MEDICAL PURPOSE TO THE ILLICIT
20 MARKETPLACE.

21 (d) "HEALTH-CARE PROVIDER" MEANS A PHYSICIAN, A PHYSICIAN
22 ASSISTANT, OR AN ADVANCED PRACTICE REGISTERED NURSE LICENSED
23 PURSUANT TO THIS TITLE 12.

24

25 (e) "RARE DISEASE" MEANS A DISEASE, DISORDER, OR CONDITION
26 THAT AFFECTS FEWER THAN TWO HUNDRED THOUSAND INDIVIDUALS IN
27 THE UNITED STATES AND IS CHRONIC, SERIOUS, LIFE-ALTERING, OR

1 LIFE-THREATENING.

2 (f) "SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE" MEANS
3 A CONTROLLED SUBSTANCE AS DESCRIBED IN SECTION 18-18-204,
4 18-18-205, 18-18-206, OR 18-18-207, RESPECTIVELY.

5 **(2) Criteria for the evaluation and treatment of chronic pain.**
6 WHEN TREATING A NONTERMINALLY ILL PATIENT, THE EVALUATION OF
7 THE PATIENT AND THE TREATMENT OF THE PATIENT'S CHRONIC PAIN IS
8 GOVERNED BY THE FOLLOWING CRITERIA:

9 (a) A DIAGNOSIS OF A CONDITION CAUSING CHRONIC PAIN BY THE
10 TREATING HEALTH-CARE PROVIDER OR A HEALTH-CARE PROVIDER
11 SPECIALIZING IN PAIN MEDICINE OR TREATMENT OF THE AREA, SYSTEM, OR
12 ORGAN OF THE BODY CONFIRMED OR PERCEIVED AS THE SOURCE OF THE
13 PAIN THAT IS SUFFICIENT TO MEET THE DEFINITION OF CHRONIC PAIN; AND

14 (b) THE CAUSE OF THE DIAGNOSIS OF CHRONIC PAIN MUST NOT
15 INTERFERE WITH MEDICALLY NECESSARY TREATMENT, INCLUDING BUT
16 NOT LIMITED TO PRESCRIBING OR ADMINISTERING A SCHEDULE II, III, IV,
17 OR V CONTROLLED SUBSTANCE.

18 **(3) Prescription and administration of controlled substances**
19 **for chronic pain.** (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
20 A HEALTH-CARE PROVIDER MAY PRESCRIBE, DISPENSE, OR ADMINISTER A
21 SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE TO A PATIENT IN THE
22 COURSE OF THE HEALTH-CARE PROVIDER'S TREATMENT OF THE PATIENT
23 FOR A DIAGNOSED CONDITION CAUSING CHRONIC PAIN. A HEALTH-CARE
24 PROVIDER IS NOT SUBJECT TO DISCIPLINARY ACTION BY THE REGULATOR
25 FOR APPROPRIATELY PRESCRIBING, DISPENSING, OR ADMINISTERING A
26 SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE IN THE COURSE OF
27 TREATMENT OF A PATIENT FOR CHRONIC PAIN IF THE HEALTH-CARE

1 PROVIDER KEEPS ACCURATE RECORDS OF THE PURPOSE, USE,
2 PRESCRIPTION, AND DISPOSAL OF THE CONTROLLED SUBSTANCE, WRITES
3 ACCURATE PRESCRIPTIONS, AND PRESCRIBES MEDICATIONS IN
4 ACCORDANCE WITH LEGITIMATE MEDICAL PURPOSE IN THE USUAL COURSE
5 OF PROFESSIONAL PRACTICE.

6 (b) A HEALTH-CARE PROVIDER ACTING IN GOOD FAITH AND BASED
7 ON THE NEEDS OF THE PATIENT WITH A DIAGNOSED CONDITION CAUSING
8 CHRONIC PAIN IS NOT SUBJECT TO DISCIPLINE FROM THE REGULATOR
9 SOLELY FOR PRESCRIBING A DOSAGE THAT EQUATES TO AN UPWARD
10 DEVIATION FROM MORPHINE MILLIGRAM EQUIVALENT DOSAGE
11 RECOMMENDATIONS OR FROM THRESHOLDS SPECIFIED IN STATE OR
12 FEDERAL OPIOID PRESCRIBING GUIDELINES OR POLICIES.

13 —

14 (c) A HEALTH-CARE PROVIDER TREATING A PATIENT WITH CHRONIC
15 PAIN BY PRESCRIBING, DISPENSING, OR ADMINISTERING ONE OR MORE
16 SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCES THAT INCLUDE, BUT
17 ARE NOT LIMITED TO, OPIOID ANALGESICS SHALL NOT BE REQUIRED TO
18 TAPER A PATIENT'S MEDICATION DOSAGE SOLELY TO MEET A
19 PREDETERMINED MORPHINE MILLIGRAM EQUIVALENT DOSAGE
20 RECOMMENDATION OR THRESHOLD IF THE PATIENT IS STABLE AND
21 COMPLIANT WITH THE TREATMENT PLAN AND IS NOT EXPERIENCING
22 SERIOUS HARM FROM THE LEVEL OF MEDICATION CURRENTLY BEING
23 PRESCRIBED OR PREVIOUSLY PRESCRIBED. A DECISION TO TAPER OR
24 MAINTAIN MEDICATION MUST INCLUDE AN INDIVIDUALIZED ASSESSMENT
25 OF THE PATIENT'S CURRENT MEDICAL CONDITION AND TREATMENT PLAN,
26 THE RISKS AND BENEFITS OF MAINTAINING OR TAPERING THE PATIENT'S
27 MEDICATION, AND A DISCUSSION WITH THE PATIENT.

1 (d) (I) A PHARMACY, CARRIER, OR PHARMACY BENEFIT MANAGER
2 SHALL NOT HAVE A POLICY IN PLACE THAT REQUIRES THE PHARMACIST TO
3 REFUSE TO FILL A PRESCRIPTION FOR AN OPIATE ISSUED BY A HEALTH-CARE
4 PROVIDER WITH THE AUTHORITY TO PRESCRIBE OPIATES SOLELY BECAUSE
5 THE PRESCRIPTION IS FOR AN OPIATE OR BECAUSE THE PRESCRIPTION
6 ORDER EXCEEDS A PREDETERMINED MORPHINE MILLIGRAM EQUIVALENT
7 DOSAGE RECOMMENDATION OR THRESHOLD.

8 (II) A HEALTH-CARE PRACTICE OR CLINIC IN WHICH A
9 HEALTH-CARE PROVIDER IS AUTHORIZED TO PRESCRIBE SCHEDULE II, III,
10 IV, OR V CONTROLLED SUBSTANCES SHALL NOT HAVE A POLICY IN PLACE
11 THAT REQUIRES THE HEALTH-CARE PROVIDER TO REFUSE TO PRESCRIBE,
12 ADMINISTER, OR DISPENSE A PRESCRIPTION FOR AN OPIATE SOLELY
13 BECAUSE THE PRESCRIPTION EXCEEDS A PREDETERMINED MORPHINE
14 MILLIGRAM EQUIVALENT DOSAGE RECOMMENDATION OR THRESHOLD.

15 (e) BEFORE TREATING A PATIENT FOR CHRONIC PAIN IN
16 ACCORDANCE WITH THIS SUBSECTION (3), A HEALTH-CARE PROVIDER
17 SHALL DISCUSS WITH THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN, IF
18 APPLICABLE, THE RISKS ASSOCIATED WITH THE SCHEDULE II, III, IV, OR V
19 CONTROLLED SUBSTANCE TO BE PRESCRIBED OR ADMINISTERED IN THE
20 COURSE OF THE HEALTH-CARE PROVIDER'S TREATMENT OF THE PATIENT
21 AND DOCUMENT THE DISCUSSION IN THE PATIENT'S RECORD.

22 **(4) Limits on applicability.** THIS SECTION DOES NOT APPLY TO:

23 (a) A HEALTH-CARE PROVIDER'S TREATMENT OF A PATIENT FOR A
24 SUBSTANCE USE DISORDER RESULTING FROM THE USE OF A SCHEDULE II,
25 III, IV, OR V CONTROLLED SUBSTANCE;

26 (b) THE PRESCRIPTION OR ADMINISTRATION OF A SCHEDULE II, III,
27 IV, OR V CONTROLLED SUBSTANCE TO A PATIENT WHOM THE

1 HEALTH-CARE PROVIDER KNOWS TO BE USING THE CONTROLLED
2 SUBSTANCE FOR NONTHERAPEUTIC OR DRUG DIVERSION PURPOSES;

3 (c) THE PRESCRIPTION, DISPENSING, OR ADMINISTRATION OF A
4 SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE FOR THE PURPOSE OF
5 TERMINATING THE LIFE OF A PATIENT WITH CHRONIC PAIN; OR

6 (d) THE PRESCRIPTION, DISPENSING, OR ADMINISTRATION OF A
7 SCHEDULE II, III, IV, OR V CONTROLLED SUBSTANCE THAT IS NOT A
8 CONTROLLED SUBSTANCE APPROVED BY THE FEDERAL FOOD AND DRUG
9 ADMINISTRATION FOR PAIN RELIEF.

10 **SECTION 2. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety.