Senate Judiciary
January 12, 2016
2016-0048s
01/09

Amendment to SB 576-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT relative to the penalty for possession and use of fentanyl-class drugs, insurance coverage for substance use disorders, the funding of the controlled drug prescription health and safety program, the membership of the board of medicine, and prescribers of controlled drugs.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Controlled Drug Act; Definition Added. Amend RSA 318-B:1 by inserting after paragraph XI the following new paragraph:

XI-a. "Fentanyl class drug" shall mean the following drugs: fentanyl, 3-methylfentanyl, 3-methylthiofentanyl, acetylfentanyl, acetyl-alpha-methylfentanyl, alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxy-3-methylfentanyl, beta-hydroxyfentanyl, para-fluorofentanyl, thiofentanyl, alfentanil, carfentanil, remifentanil, sufentanil, and all optical isomers of these substances. Drugs which become controlled after September 1, 2015, pursuant to RSA 318:B-1-a; and are known or scheduled with a common name that includes the term "fentanyl", or "fentanil" shall also be considered as belonging to this class, along with optical isomers of same. Drugs may be added or removed from this classification by action of the general court.

2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(a)(3) to read as follows:

(3) Heroin or its analog [~~or~~], crack cocaine, ***or a fentanyl class drug*** in a quantity of 5 grams or more, including any adulterants or dilutants.

3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(b)(4) to read as follows:

(4) Heroin or its analog [~~or~~], crack cocaine, ***or a fentanyl class drug*** in a quantity of one gram or more, including any adulterants or dilutants;

4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(c)(4) to read as follows:

(4) Heroin or its analog [~~or~~], crack cocaine, ***or a fentanyl class drug*** in a quantity of less than one gram, including any adulterants or dilutants;

5 Controlled Drug Act; Controlled Drug Prescription Health and Safety Program. Amend RSA 318-B:32, II-IV to read as follows:

II. [~~All~~] ***Any*** costs incurred by the board for the implementation and operation of the program [~~shall~~] ***may*** be supported through grants, gifts, or user contributions. The board may charge a fee to individuals who request their own prescription information. The amount charged for an individual's request for his or her prescription information shall not exceed the actual cost of

providing that information.

III. [~~There shall be no state general funds appropriated for the implementation or operation of the program.~~

~~IV.~~] Prescription information relating to any individual, which information does not meet the level established to suggest possible drug abuse or diversion shall be deleted within 36 months after the initial prescription was dispensed. All other information shall be deleted after 3 years.

6 Controlled Drug Prescription Health and Safety Program; Access to Program. Amend RSA 318-B:33, II-a to read as follows:

II-a. Only registered prescribers [~~and~~]***,*** dispensers, ***or their designees, and federal health prescribers and dispensers working in federal facilities located in New Hampshire, Massachusetts, Maine, and Vermont*** shall be eligible to access the program.

7 Controlled Drug Prescription Health and Safety Program; Operation. Amend RSA 318-B:33, V to read as follows:

V.***(a) Except as provided in subparagraphs (b) and (c),*** each dispenser shall submit the required information in accordance with transmission methods [~~and frequency as established by the program; but no more than 7 days~~] ***daily by the close of business on the next business day*** from the date the prescription was dispensed.

(b) Veterinarians shall submit the information required under subparagraph (a) no more than 7 days from the date the prescription was dispensed.

(c) Dispensers who have a federal Drug Enforcement Administration license, but who do not dispense controlled substances may request a waiver from the requirements of subparagraph (a) from the board.

8 New Subparagraph; Providing Controlled Drug Prescription Health and Safety Information; Office of the Chief Medical Examiner. Amend RSA 318-B:35, I(c) by inserting after subparagraph (2) the following new subparagraph:

(3) The office of the chief medical examiner for the purpose of investigating the death of an individual.

9 New Sections; Certain Registrants Required to Query the Program Prior to Prescribing Controlled Substances. Amend RSA 318-B by inserting after section 38 the following new sections:

318-B:39 Prescribers Required to Query the Program Prior to Prescribing Controlled Substances. Prescribers required to register with the program under this subdivision shall query the program for a patient's initial prescription when prescribing schedule II, III, and IV opioids for the management or treatment of pain and then periodically and at least twice per year, except when:

I. Controlled medications are to be administered to patients in a health care setting.

II. Treating acute pain associated with serious traumatic injury, post-operatively, or with an acute medical condition, with clear objective findings by the practitioner, for no more than 30

days.

318-B:40 Competency Requirements. All prescribers required to register with the program who possess a United States Drug Enforcement Administration (DEA) license number shall complete 3 contact hours of free appropriate prescriber's regulatory board-approved online continuing education or pass an online examination, in the area of pain management and addiction disorder or a combination, as a condition for initial licensure and license renewal. Verification of successful completion of the examination or of the required continuing education shall be submitted to the prescriber's regulatory board with the licensee's application for initial licensure or renewal. A list of the prescriber's regulatory boards' approved continuing education courses and online examinations in pain management and addiction disorder, shall be available on the office of professional licensure and certification's Internet website.

10 Board of Medicine; Medical Review Committee. Amend RSA 329:17, V-a to read as follows:

V-a. A medical review subcommittee of [~~11~~] ***13*** members shall be nominated by the board of medicine and appointed by the governor and council. The subcommittee shall consist of one member of the board of medicine and [~~10~~] ***12*** other persons, 3 of whom shall be public members, one of whom shall be a physician assistant, and [~~6~~] ***8*** of whom shall be physicians. ***One of the physician members shall practice in the area of pain medicine and anesthesiology.*** Any public member of the subcommittee shall be a person who is not, and never was, a member of the medical profession or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of medical services or an activity directly related to medicine, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment. The terms of the public members shall be staggered so that no 2 public members' terms expire in the same year. The subcommittee members shall be appointed for 3-year terms, and shall serve no more than 2 terms. Upon referral by the board, the subcommittee shall review disciplinary actions reported to the board under paragraphs II-V of this section, except that matters concerning a medical director involved in a current internal or external grievance pursuant to RSA 420-J shall not be reviewed until the grievance process has been completed. Following review of each case, the subcommittee shall make recommendations to the board. Funds shall be appropriated from the general fund for use by the subcommittee to investigate allegations under paragraphs I-V of this section. The board shall employ through the office of professional licensure and certification physician as a medical review subcommittee investigator who shall serve at the pleasure of the board. The salary of the medical review subcommittee investigator shall be established by RSA 94:1-a.

11 New Subdivision; Substance Use Disorders. Amend RSA 420-J by inserting after section 14 the following new subdivision:

Substance Use Disorders

420-J:15 Definitions. In this subdivision:

I. "ASAM criteria" means the latest edition of the Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, developed by the American Society of Addiction Medicine.

II. "Substance use disorder services" means health care services that are provided to a covered person as treatment for an addictive substance-related condition, not including treatment for any condition related to tobacco use.

420-J:16 Levels of Care Criteria; Attestation.

I. Whenever substance use disorder services are a covered benefit under a health benefit plan subject to this chapter, the health carrier providing such benefits shall rely upon ASAM criteria when determining medical necessity and developing utilization review standards for levels of care for substance use disorder services.

II. On January 1 of each year, each health carrier that provides coverage for substance use disorder services shall file with the commissioner an annual attestation of compliance with this subdivision.

420-J:17 Prior Authorization. Whenever substance use disorder services are a covered benefit under a health benefit plan subject to this chapter, no prior authorization shall be required for the first 2 routine outpatient visits of an episode of care by an individual for assessment and care with respect to a substance use disorder.

12 Consultation Required Regarding 24-Hour Hotline. The commissioner of the department of health and human services, in consultation with the commissioner of the department of safety, shall determine whether a 24-hour drug crisis hotline should be established. If it is determined that a 24-hour hotline should be established, the commissioner of the department of health and human services shall submit a report, on or before April 1, 2016, with recommendations relative to staffing the hotline, which department would administer the hotline, how the hotline would be paid for, and other issues necessary to implement the hotline, to the fiscal committee of the general court, the president of the senate, the speaker of the house of representatives, and the governor.

13 Contingency. Sections 7 and 9 of this act shall take effect September 1, 2016 only if moneys are appropriated or otherwise acquired for technology upgrades to the controlled drug prescription health and safety program, established under RSA 318-B:32, as certified by the executive director of the pharmacy board to the secretary of state and the director of legislative services.

14 Effective Date.

I. Sections 7 and 9 of this act shall take effect as provided in section 13 of this act.

II. Section 11 of this act shall take effect January 1, 2017.

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

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AMENDED ANALYSIS

This bill:

I. Adds possession and use of fentanyl-class drugs for the purposes of the penalty under the controlled drug act.

II. Clarifies the funding of the controlled drug prescription health and safety program.

III. Clarifies access to the information of the controlled drug prescription health and safety program.

IV. Requires prescribers of controlled drugs to query the controlled drug prescription health and safety program prior to prescribing controlled substances and to take 3 hours of continuing education or an online examination.

V. Adds 2 physician members to the medical review committee.

VI. Clarifies substance use disorder services for treatment for an addictive substance-related condition under the Medicaid managed care program.

VII. Requires the commissioner of the department of health and human services to consult with the commissioner of the department of safety regarding a 24-hour drug crisis hotline.

VIII. Requires dispensers to submit the required information to the controlled drug prescription health and safety program daily by the close of business on the next business day from the date the prescription was dispensed. Current law requires such information to be submitted no more than 7 days from the date the prescription was dispensed.