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H.174

Introduced by Representatives Browning of Arlington, Morrissey of
Bennington, Sullivan of Dorset, Bancroft of Westford,
Batchelor of Derby, Bates of Bennington, Beck of St.
Johnsbury, Brennan of Colchester, Brownell of Pownal,
Canfield of Fair Haven, Coffey of Guilford, Cupoli of Rutland
City, Fagan of Rutland City, Gamache of Swanton, Gannon of
Wilmington, Goslant of Northfield, Graham of Williamstown,
Gregoire of Fairfield, Harrison of Chittenden, Higley of Lowell,
James of Manchester, Jerome of Brandon, Leffler of Enosburgh,
Martel of Waterford, Mattos of Milton, Myers of Essex, Norris
of Shoreham, Ode of Burlington, Page of Newport City, Palasik
of Milton, Rosenquist of Georgia, Savage of Swanton, Strong of
Albany, Terenzini of Rutland Town, and Toof of St. Albans
Town

Referred to Committee on

Date:

Subject: Health; prescription drugs; opioids; health care professionals; right of
action

1 Statement of purpose of bill as introduced: This bill proposes to specify
2 statutory limits on the prescription of opioids and create a private right of
3 action for injuries caused by prescriptions made in violation of those limits.

4 An act relating to limits on the prescription of opioids and creating a private
5 right of action for prescriptions in excess of those limits

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 Sec. 1. 18 V.S.A. chapter 84, subchapter 4 is added to read:

8 Subchapter 4. Prescription of Opioids; Right of Action

9 § 4271. DEFINITIONS

10 As used in this subchapter:

11 (1) “Acute pain” means pain lasting fewer than 90 days that is a normal
12 and predicted physiological response to a traumatic injury, surgical procedure,
13 or specific disease.

14 (2) “Affiliate or employer of a prescriber” means any hospital, physician
15 practice group, or other health care facility or entity with which the prescriber
16 has an employment, ownership, or contractual relationship and that has, with
17 respect to any individual patient for whom the prescriber has prescribed a
18 controlled substance to treat acute or chronic pain, any professional or medical
19 responsibility.

1 (3) “Chronic pain” means pain caused by one or more diseases or
2 abnormal conditions and that continues for 90 days or longer.

3 (4) “Controlled substance” means a drug or other substance, or
4 immediate precursor, included in schedule I, II, III, IV, or V of the federal
5 Controlled Substances Act, 21 U.S.C. § 801 et seq.

6 (5) “Initial prescription for acute pain” means a prescriber’s first order
7 of a controlled substance as a palliative treatment for a patient who is
8 experiencing pain based on the occurrence of a traumatic injury or surgical
9 procedure or upon the recent onset of pain naturally caused by a specific
10 disease.

11 (6) “Morphine milligram equivalent” or “MME” means a value assigned
12 to opioids to enable comparison of relative potency using morphine as the
13 standard.

14 (7) “Prescriber” means a licensed health care professional with the
15 authority to prescribe controlled substances.

16 (8) “Subsequent or additional prescription for acute pain” means a
17 prescriber’s second and subsequent orders of a controlled substance as a
18 palliative treatment for a patient suffering acute pain for an event or condition
19 that caused any prescriber to write an initial prescription for acute pain.

20 § 4272. PRESCRIPTION OF OPIOIDS FOR PAIN

21 (a) A prescriber shall not:

1 (1) except in an inpatient hospital or a skilled or intermediate care
2 nursing facility setting, make an initial prescription of an opioid controlled
3 substance for acute pain having an average daily MME of 50 for a period
4 exceeding seven days for a patient 18 years of age or older or an average daily
5 MME of 24 for a period exceeding three days for a patient under 18 years
6 of age;

7 (2) in an inpatient hospital or a skilled or intermediate care nursing
8 facility setting, make an initial prescription of an opioid controlled substance
9 for acute pain for a period exceeding 10 days for a patient 18 years of age or
10 older or for a period exceeding five days for a patient under 18 years of age;

11 (3) except in an inpatient hospital or a skilled or intermediate care
12 nursing facility setting, for pain associated with significant or severe trauma,
13 complex surgical interventions, or postoperative complications, make a
14 subsequent or additional prescription of an opioid controlled substance for
15 acute pain or in an amount or duration that exceeds the prescription durations
16 and average daily MME opioid limits for adults and children set forth in rules
17 adopted by the Commissioner of Health in accordance with subsection 4289(e)
18 of this title;

19 (4) write a prescription for an opioid controlled substance as a palliative
20 treatment for chronic pain except pursuant to and in compliance with a written
21 plan that:

1 (A) identifies the diagnosis or diagnoses supporting the use of
2 opioids for chronic pain;

3 (B) requires periodic follow-up visits and evaluations at least once
4 every 90 days regarding the continued need for opioid use;

5 (C) in the case of a prescription for an opioid controlled substance
6 with an average daily MME equal to or exceeding 90, requires a co-
7 prescription for naloxone as well as the preparation of an initial written
8 analysis and subsequent 90-day written reanalyses of all relevant
9 considerations of opioid abuse and addiction risks, including evidence of any
10 aberrant behaviors, early refills of opioid controlled substance prescriptions,
11 and other known risks associated with misuse, abuse, diversion, addiction, and
12 overdose; or

13 (5) write a prescription for an opioid controlled substance as a palliative
14 treatment for chronic or acute pain, or write a prescription for an extended-
15 release hydrocodone or oxycodone in a non-abuse-deterrent formulation,
16 without first querying the Vermont Prescription Monitoring System.

17 (b) A prescriber shall comply with any additional requirements of rules
18 adopted by the Commissioner of Health in accordance with section 4287 and
19 subsection 4289(e) of this title, which shall be consistent with the provisions of
20 this section.

1 § 4273. PRIVATE CAUSE OF ACTION

2 (a) A person who is injured as a result of the development of an opioid
3 dependency or addiction caused by the failure of a prescriber to comply with
4 the requirements of subsection 4272(a) of this title may bring an action in
5 Superior Court against the prescriber for damages, reasonable costs, and
6 attorney's fees.

7 (b) In an action brought under subsection (a) of this section:

8 (1) The court may issue an award for the person's actual damages or
9 \$500.00 for a first violation or \$1,000.00 for each subsequent violation,
10 whichever is greater.

11 (2) Any affiliate or employer of the prescriber shall be jointly and
12 severally liable for all damages, costs, and fees awarded to the complainant
13 pursuant to this section.

14 (3) If the prescriber commits two or more violations of subsection
15 4272(e) of this title with respect to the complainant within any 12-month
16 period, the prescriber shall be subject to a rebuttable presumption that the
17 prescriber caused the opioid dependency and any injury suffered by the
18 complainant.

19 (4) If the prescriber commits three or more violations of subsection
20 4272(e) of this title with respect to the care and treatment of the complainant in

1 any 12-month period, the prescriber shall be subject to an award of punitive
2 damages.

3 (5) If the prescriber commits four or more violations of subsection
4 4272(e) of this title with respect to the care and treatment of the complainant in
5 any 12-month period, any manufacturer and distributor of an opioid controlled
6 substance prescribed to the complainant consistently throughout that period as
7 a palliative treatment for acute or chronic pain shall be strictly liable, jointly
8 and severally, for all damages, costs, and fees awarded to the complainant
9 pursuant to this section.

10 (c) This section shall not limit any other claims the person may have under
11 applicable law.

12 (d) An action brought under this section shall be commenced not later than
13 three years after the date of the last occurring violation of subsection 4272(a)
14 of this title.

15 Sec. 2. DEPARTMENT OF HEALTH; RULEMAKING

16 The Department of Health shall amend its rule governing the prescribing of
17 opioids for pain to conform with the provisions of this act.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on July 1, 2019 and shall apply to all opioid
20 prescriptions written on or after that date.