

HOUSE BILL 1051

J3, J1, J2

11r1610

By: **Delegates Carter, Braveboy, Gutierrez, Niemann, Oaks, and Washington**
Introduced and read first time: February 11, 2011
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Freestanding Pain Management Clinics – Regulation**

3 FOR the purpose of prohibiting a freestanding pain management clinic from operating
4 in the State on or after a certain date unless the Secretary of Health and Mental
5 Hygiene has issued a license to the clinic; requiring the Secretary to issue a
6 license to a freestanding pain management clinic if certain requirements are
7 met; providing that a license is not transferable; requiring the Secretary to
8 adopt certain regulations; establishing certain qualifications for a license to
9 operate a freestanding pain management clinic; establishing certain
10 requirements for owners and operators of a freestanding pain management
11 clinic; specifying a process for applying for and renewing a license; authorizing
12 the Secretary to investigate certain complaints; requiring that complaints
13 concerning certain health care practitioners be referred to certain health
14 occupation boards; authorizing the Secretary to deny, suspend, restrict, or
15 revoke licenses under certain circumstances; establishing certain penalties for a
16 violation of this Act or a regulation adopted under this Act; providing for the
17 application of this Act; defining certain terms; and generally relating to the
18 regulation of freestanding pain management clinics.

19 BY adding to

20 Article – Health – General

21 Section 19–2401 through 19–2410 to be under the new subtitle “Subtitle 24.

22 Freestanding Pain Management Clinics”

23 Annotated Code of Maryland

24 (2009 Replacement Volume and 2010 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **SUBTITLE 24. FREESTANDING PAIN MANAGEMENT CLINICS.**

2 **19-2401.**

3 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**

5 **(B) “CONTROLLED DANGEROUS SUBSTANCE” HAS THE MEANING**
6 **STATED IN § 5-101 OF THE CRIMINAL LAW ARTICLE.**

7 **(C) “FREESTANDING PAIN MANAGEMENT CLINIC” MEANS A FACILITY:**

8 **(1) THAT IS PUBLICLY OR PRIVATELY OWNED;**

9 **(2) THAT IS PHYSICALLY SEPARATE FROM ANOTHER LICENSED**
10 **OR REGULATED CLINIC OR FACILITY; AND**

11 **(3) THAT ENGAGES IN THE TREATMENT OF PAIN BY PRESCRIBING**
12 **CONTROLLED DANGEROUS SUBSTANCES AS AT LEAST 50% OF ITS SERVICES.**

13 **(D) “HEALTH CARE PRACTITIONER” MEANS A PERSON WHO IS**
14 **LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH**
15 **OCCUPATIONS ARTICLE TO PROVIDE MEDICAL SERVICES IN THE ORDINARY**
16 **COURSE OF BUSINESS OR PRACTICE OF A PROFESSION.**

17 **(E) “LICENSE” MEANS A LICENSE ISSUED BY THE SECRETARY UNDER**
18 **THIS SUBTITLE.**

19 **19-2402.**

20 **THIS SUBTITLE DOES NOT APPLY TO:**

21 **(1) A MEDICAL OR DENTAL SCHOOL OR AN OUTPATIENT CLINIC**
22 **ASSOCIATED WITH A MEDICAL OR DENTAL SCHOOL;**

23 **(2) A HOSPITAL, INCLUDING ANY OUTPATIENT FACILITY OR**
24 **CLINIC OF A HOSPITAL;**

25 **(3) A HOSPICE CARE FACILITY LICENSED UNDER SUBTITLE 9 OF**
26 **THIS TITLE;**

27 **(4) A FACILITY MAINTAINED OR OPERATED BY THE STATE; OR**

1 **(5) A CLINIC MAINTAINED OR OPERATED BY THE FEDERAL**
2 **GOVERNMENT.**

3 **19-2403.**

4 **(A) ON OR AFTER OCTOBER 1, 2012, A FREESTANDING PAIN**
5 **MANAGEMENT CLINIC MAY NOT OPERATE IN THE STATE UNLESS THE**
6 **FREESTANDING PAIN MANAGEMENT CLINIC IS LICENSED UNDER THIS**
7 **SUBTITLE.**

8 **(B) AFTER INSPECTION AND INVESTIGATION, THE SECRETARY SHALL**
9 **ISSUE A LICENSE TO AN APPLICANT THAT MEETS THE REQUIREMENTS OF THIS**
10 **SUBTITLE AND ANY APPLICABLE REGULATIONS ADOPTED UNDER THIS**
11 **SUBTITLE.**

12 **(C) A LICENSE ISSUED UNDER THIS SUBTITLE IS NOT TRANSFERABLE.**

13 **19-2404.**

14 **THE SECRETARY SHALL ADOPT REGULATIONS TO:**

15 **(1) IMPLEMENT THE PROVISIONS OF THIS SUBTITLE;**

16 **(2) ENSURE QUALITY OF CARE AND PATIENT SAFETY BY**
17 **ESTABLISHING:**

18 **(I) PROCEDURES AND PRACTICE STANDARDS FOR**
19 **OPERATING FREESTANDING PAIN MANAGEMENT CLINICS;**

20 **(II) QUALIFICATIONS OF HEALTH CARE PRACTITIONERS**
21 **AND SUPPORT PERSONNEL;**

22 **(III) LICENSING AND LICENSE RENEWAL REQUIREMENTS;**

23 **(IV) REQUIREMENTS FOR INSPECTIONS AND COMPLAINT**
24 **INVESTIGATIONS; AND**

25 **(V) ANY OTHER REQUIREMENTS THAT THE SECRETARY**
26 **CONSIDERS NECESSARY FOR QUALITY OF CARE AND PATIENT SAFETY; AND**

27 **(3) ESTABLISH ADMINISTRATIVE PENALTIES THAT MAY BE**
28 **IMPOSED UNDER § 19-2410 OF THIS SUBTITLE.**

29 **19-2405.**

1 **(A) TO QUALIFY FOR A LICENSE TO OPERATE A FREESTANDING PAIN**
2 **MANAGEMENT CLINIC, AN APPLICANT SHALL:**

3 **(1) EMPLOY A MEDICAL DIRECTOR WHO IS A PHYSICIAN:**

4 **(i) LICENSED UNDER TITLE 14 OF THE HEALTH**
5 **OCCUPATIONS ARTICLE; AND**

6 **(ii) WHO IS BOARD CERTIFIED BY THE AMERICAN BOARD**
7 **OF MEDICAL SPECIALTIES OR THE AMERICAN BOARD OF OSTEOPATHIC**
8 **MEDICAL SPECIALTIES IN THE PHYSICIAN'S PRIMARY SPECIALTY AND HAS A**
9 **SUBSPECIALTY CERTIFICATION IN PAIN MANAGEMENT; AND**

10 **(2) SATISFY THE SECRETARY THAT THE FREESTANDING PAIN**
11 **MANAGEMENT CLINIC FOR WHICH THE APPLICATION IS MADE WILL BE**
12 **OPERATED IN ACCORDANCE WITH THIS SECTION.**

13 **(B) THE OWNER OR OPERATOR OF A FREESTANDING PAIN**
14 **MANAGEMENT CLINIC, AN EMPLOYEE OF A FREESTANDING PAIN MANAGEMENT**
15 **CLINIC, OR A PERSON THAT A FREESTANDING PAIN MANAGEMENT CLINIC**
16 **CONTRACTS WITH FOR SERVICES MAY NOT:**

17 **(1) HAVE BEEN DENIED, BY ANY JURISDICTION, A LICENSE**
18 **UNDER WHICH THE OWNER, OPERATOR, EMPLOYEE, OR PERSON MAY**
19 **PRESCRIBE, DISPENSE, ADMINISTER, SUPPLY, OR SELL A CONTROLLED**
20 **DANGEROUS SUBSTANCE;**

21 **(2) HAVE HELD A LICENSE ISSUED BY ANY JURISDICTION UNDER**
22 **WHICH THE OWNER, OPERATOR, EMPLOYEE, OR PERSON MAY PRESCRIBE,**
23 **DISPENSE, ADMINISTER, SUPPLY, OR SELL A CONTROLLED DANGEROUS**
24 **SUBSTANCE, THAT HAS BEEN RESTRICTED; OR**

25 **(3) HAVE BEEN SUBJECT TO DISCIPLINARY ACTION BY ANY**
26 **LICENSING ENTITY FOR CONDUCT THAT WAS A RESULT OF DEPENDENCY ON**
27 **DRUGS OR ALCOHOL.**

28 **(C) A FREESTANDING PAIN MANAGEMENT CLINIC MAY NOT BE OWNED**
29 **WHOLLY OR PARTLY BY A PERSON WHO HAS BEEN CONVICTED OF OR PLED**
30 **NOLO CONTENDERE TO:**

31 **(1) A FELONY; OR**

1 **(2) A MISDEMEANOR, THE FACTS OF WHICH RELATE TO THE**
2 **ILLEGAL DISTRIBUTION OF PRESCRIPTION DRUGS OR A CONTROLLED**
3 **DANGEROUS SUBSTANCE.**

4 **(D) THE OWNER OR OPERATOR OF A FREESTANDING PAIN**
5 **MANAGEMENT CLINIC SHALL:**

6 **(1) BE ONSITE AT THE FREESTANDING PAIN MANAGEMENT**
7 **CLINIC DURING AT LEAST 33% OF THE FREESTANDING PAIN MANAGEMENT**
8 **CLINIC'S TOTAL OPERATING HOURS;**

9 **(2) REQUIRE THE FREESTANDING PAIN MANAGEMENT CLINIC'S**
10 **MEDICAL DIRECTOR TO REVIEW FOR APPROPRIATENESS OF CARE AT LEAST 33%**
11 **OF THE TOTAL NUMBER OF PATIENT FILES OF THE FREESTANDING PAIN**
12 **MANAGEMENT CLINIC, INCLUDING THE PATIENT FILES OF FREESTANDING PAIN**
13 **MANAGEMENT CLINIC EMPLOYEES OR CONTRACTORS WHO HAVE BEEN**
14 **DELEGATED AUTHORITY FOR PATIENT CARE; AND**

15 **(3) HAVE A WRITTEN CONTROLLED DANGEROUS SUBSTANCE**
16 **COMPLIANCE PROTOCOL.**

17 **19-2406.**

18 **(A) AN APPLICANT FOR A LICENSE SHALL:**

19 **(1) SUBMIT AN APPLICATION TO THE SECRETARY; AND**

20 **(2) PAY TO THE SECRETARY THE APPLICATION FEE SET BY THE**
21 **SECRETARY THROUGH REGULATION.**

22 **(B) THE APPLICATION SHALL:**

23 **(1) BE ON A FORM AND ACCOMPANIED BY ANY SUPPORTING**
24 **INFORMATION THAT THE SECRETARY REQUIRES; AND**

25 **(2) BE SIGNED BY THE APPLICANT.**

26 **19-2407.**

27 **(A) A LICENSE EXPIRES ON THE SECOND ANNIVERSARY OF ITS**
28 **EFFECTIVE DATE UNLESS THE LICENSE IS RENEWED FOR A 2-YEAR TERM AS**
29 **PROVIDED IN THIS SECTION.**

1 **(B) BEFORE THE LICENSE EXPIRES, A LICENSE MAY BE RENEWED FOR**
2 **AN ADDITIONAL 2-YEAR TERM, IF THE APPLICANT:**

3 **(1) OTHERWISE IS ENTITLED TO THE LICENSE;**

4 **(2) PAYS TO THE SECRETARY THE RENEWAL FEE SET BY THE**
5 **SECRETARY THROUGH REGULATION; AND**

6 **(3) SUBMITS TO THE SECRETARY:**

7 **(I) A RENEWAL APPLICATION ON THE FORM THAT THE**
8 **SECRETARY REQUIRES; AND**

9 **(II) SATISFACTORY EVIDENCE OF COMPLIANCE WITH ANY**
10 **REQUIREMENT UNDER THIS SUBTITLE FOR LICENSE RENEWAL.**

11 **(C) THE SECRETARY SHALL RENEW THE LICENSE IF THE APPLICANT**
12 **MEETS THE REQUIREMENTS OF THIS SECTION.**

13 **(D) THE SECRETARY SHALL SET REASONABLE APPLICATION AND**
14 **RENEWAL FEES NOT TO EXCEED THE ADMINISTRATIVE COSTS OF THE**
15 **LICENSING PROGRAM.**

16 **(E) A LICENSE DOES NOT ENTITLE THE LICENSEE TO AN EXEMPTION**
17 **FROM OTHER PROVISIONS OF LAW.**

18 **19-2408.**

19 **(A) THE SECRETARY MAY INVESTIGATE COMPLAINTS CONCERNING THE**
20 **CONFORMANCE OF A FREESTANDING PAIN MANAGEMENT CLINIC TO THE**
21 **REQUIREMENTS OF THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS**
22 **SUBTITLE.**

23 **(B) IF THE COMPLAINT CONCERNS HEALTH CARE PRACTITIONER**
24 **PERFORMANCE OR STANDARDS OF MEDICAL PRACTICE, THE COMPLAINT SHALL**
25 **BE REFERRED TO THE BOARD THAT LICENSES, CERTIFIES, OR OTHERWISE**
26 **AUTHORIZES THE HEALTH CARE PRACTITIONER UNDER THE HEALTH**
27 **OCCUPATIONS ARTICLE TO PROVIDE MEDICAL SERVICES.**

28 **19-2409.**

29 **(A) (1) THE SECRETARY MAY DENY A LICENSE TO AN APPLICANT, OR**
30 **SUSPEND, RESTRICT, OR REVOKE A LICENSE OF A LICENSEE, IF THE APPLICANT**
31 **OR LICENSEE HAS BEEN CONVICTED OF:**

1 **(I) A FELONY THAT RELATES TO THE MARYLAND MEDICAL**
2 **ASSISTANCE PROGRAM; OR**

3 **(II) A CRIME INVOLVING MORAL TURPITUDE.**

4 **(2) THE SECRETARY MAY DENY A LICENSE TO AN APPLICANT, OR**
5 **SUSPEND, RESTRICT, OR REVOKE A LICENSE OF A LICENSEE, IF THE APPLICANT**
6 **OR LICENSEE DOES NOT MEET THE REQUIREMENTS OF THIS SUBTITLE OR ANY**
7 **REGULATION ADOPTED UNDER THIS SUBTITLE.**

8 **(B) (1) BEFORE DENYING, SUSPENDING, RESTRICTING, OR REVOKING**
9 **A LICENSE UNDER THIS SECTION, THE SECRETARY SHALL PROVIDE AN**
10 **APPLICANT OR A LICENSEE AN OPPORTUNITY FOR A HEARING.**

11 **(2) THE SECRETARY SHALL SEND A HEARING NOTICE TO THE**
12 **APPLICANT OR LICENSEE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED,**
13 **AT LEAST 30 DAYS BEFORE THE HEARING.**

14 **19-2410.**

15 **(A) (1) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE**
16 **OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A**
17 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING**
18 **\$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.**

19 **(2) EACH DAY A VIOLATION CONTINUES IS A SEPARATE OFFENSE.**

20 **(B) IN ADDITION TO THE PENALTIES PROVIDED UNDER SUBSECTION (A)**
21 **OF THIS SECTION, THE SECRETARY MAY IMPOSE AN ADMINISTRATIVE PENALTY**
22 **NOT EXCEEDING \$1,000 FOR A VIOLATION OF ANY PROVISION OF THIS SUBTITLE**
23 **OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2011.