

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE
5 SUBSTITUTE
6 FOR

7 HOUSE BILL NO. 888

8 By: Standridge of the Senate

9 and

10 Echols of the House

11 COMMITTEE SUBSTITUTE

12 An Act relating to controlled dangerous substances;
13 defining terms; requiring pain management clinics to
14 register with State Board of Medical Licensure and
15 Supervision; providing exemptions; stipulating
16 registration procedures; requiring clinics to
17 designate physician; providing for the denial,
18 revocation or suspension of registration under
19 certain circumstances; defining term; requiring
20 facility operations to cease when registration is
21 revoked or suspended; requiring removal of signage;
22 prohibiting person from applying to operate pain
23 management clinic for certain period of time after
24 revocation; limiting period of suspension; requiring
new registration application if clinic changes
ownership; prohibiting physicians from practicing
medicine in unregistered pain management clinics;
providing for disciplinary action for violations;
limiting who may prescribe controlled dangerous
substances at registered pain management clinics;
prohibiting the dispensation of controlled dangerous
substances at pain management clinics; specifying
physician responsibilities; providing facility and
physical operations requirements; stipulating certain
infection control requirements; providing safety
requirements for buildings, grounds and equipment of
clinics; providing certain quality assurance
requirements; stipulating certain data collection and

1 reporting requirements; providing for the
2 accessibility of certain data and reports; providing
3 penalties; directing promulgation of rules; providing
4 for codification; and providing an effective date.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2-1101 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "Board eligible" means successful completion of an
11 anesthesia, physical medicine and rehabilitation, rheumatology or
12 neurology residency program approved by the Accreditation Council
13 for Graduate Medical Education or the American Osteopathic
14 Association for a period of six (6) years from successful completion
15 of such residency program;

16 2. "Chronic nonmalignant pain" means pain unrelated to cancer
17 which persists beyond the usual course of disease or the injury that
18 is the cause of the pain or more than ninety (90) calendar days
19 after surgery; and

20 3. "Pain management clinic" or "clinic" means any publicly or
21 privately owned facility:

22 a. that advertises in any medium for any type of pain
23 management services, and
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1 b. where in any month a majority of patients are
2 prescribed opioids, benzodiazepines, barbiturates or
3 carisoprodol for the treatment of chronic nonmalignant
4 pain.

5 SECTION 2. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-1102 of Title 63, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Each pain management clinic shall register with the State
9 Board of Medical Licensure and Supervision unless:

10 1. The majority of the physicians who provide services in the
11 clinic primarily provide surgical services;

12 2. The clinic is affiliated with an accredited medical school
13 at which training is provided for medical students, residents or
14 fellows;

15 3. The clinic does not prescribe controlled dangerous
16 substances for the treatment of pain;

17 4. The clinic is wholly owned and operated by one or more
18 board-eligible or board-certified anesthesiologists, physiatrists,
19 rheumatologists or neurologists; or

20 5. The clinic is wholly owned and operated by a physician
21 multispecialty practice where one or more board-eligible or board-
22 certified medical specialists, who have also completed fellowships
23 in pain medicine approved by the Accreditation Council for Graduate
24 Medical Education or who are also certified in pain medicine by the

1 American Board of Pain Medicine or a board approved by the American
2 Board of Physician Specialties, the American Association of
3 Physician Specialists or the American Osteopathic Association,
4 perform interventional pain procedures of the type routinely billed
5 using surgical codes.

6 B. Each clinic location shall be registered separately
7 regardless of whether the clinic is operated under the same business
8 name or management as another clinic.

9 C. As a part of registration, a clinic shall designate a
10 physician who is responsible for complying with all requirements
11 related to registration and operation of the clinic in compliance
12 with this act. Within ten (10) calendar days after termination of a
13 designated physician, the clinic shall notify the State Board of
14 Medical Licensure and Supervision of the identity of another
15 designated physician for that clinic. The designated physician
16 shall have a full, active and unencumbered license pursuant to
17 Section 480 et seq. or Section 620 et seq. of Title 59 of the
18 Oklahoma Statutes and shall practice at the clinic location for
19 which the physician has assumed responsibility. Failing to have a
20 licensed designated physician practicing at the location of the
21 registered clinic may be the basis for a summary suspension of the
22 clinic registration certificate as described in this section.

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1 D. The State Board of Medical Licensure and Supervision shall
2 deny registration to any pain management clinic owned by or with any
3 contractual or employment relationship with a physician:

4 1. Whose Drug Enforcement Administration number has ever been
5 revoked;

6 2. Whose application for a license to prescribe, dispense or
7 administer a controlled substance has been denied for disciplinary
8 action by the appropriate medical regulatory board of the physician;
9 or

10 3. Who has been convicted of or pleaded guilty or nolo
11 contendere to, regardless of adjudication, an offense that
12 constitutes a felony for receipt of illicit or diverted drugs,
13 including a controlled substance listed in Schedule I, II, III, IV
14 or V of the Uniform Controlled Dangerous Substances Act, in this
15 state, any other state or the United States.

16 E. If the State Board of Medical Licensure and Supervision
17 finds that a pain management clinic is owned, directly or
18 indirectly, by a person meeting any criteria listed in subsection D
19 of this section, the State Board of Medical Licensure and
20 Supervision shall revoke the certificate of registration previously
21 issued by the State Board of Medical Licensure and Supervision. As
22 determined by rule, the State Board of Medical Licensure and
23 Supervision may grant an exemption to denying a registration or
24 revoking a previously issued registration if more than five (5)

1 years have elapsed since adjudication. As used in this section, the
2 term "convicted" includes an adjudication of guilt following a plea
3 of guilty or nolo contendere or the forfeiture of a bond when
4 charged with a crime.

5 F. If the registration of a pain management clinic is revoked
6 or suspended, the designated physician of the pain management
7 clinic, the owner or lessor of the pain management clinic property,
8 the manager and the proprietor shall cease to operate the facility
9 as a pain management clinic as of the effective date of the
10 suspension or revocation.

11 G. If a pain management clinic registration is revoked or
12 suspended, the designated physician of the pain management clinic,
13 the owner or lessor of the clinic property, the manager or the
14 proprietor is responsible for removing all signs and symbols
15 identifying the premises as a pain management clinic.

16 H. If the clinic's registration is revoked, any person named in
17 the registration documents of the pain management clinic, including
18 persons owning or operating the pain management clinic, shall not,
19 as an individual or as a part of a group, apply to operate a pain
20 management clinic for one (1) year after the date the registration
21 is revoked.

22 I. The period of suspension for the registration of a pain
23 management clinic shall be prescribed by the State Board of Medical
24 Licensure and Supervision but shall not exceed one (1) year.

1 J. A change of ownership of a registered pain management clinic
2 requires submission of a new registration application.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-1103 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A physician shall not practice medicine in a pain management
7 clinic if the clinic is not registered with the State Board of
8 Medical Licensure and Supervision as required by this act. Any
9 physician who qualifies to practice medicine in a pain management
10 clinic pursuant to rules adopted by the appropriate medical
11 regulatory board of the physician may continue to practice medicine
12 in a pain management clinic as long as the physician continues to
13 meet the qualifications prescribed in the rules. A physician who
14 violates this subsection is subject to disciplinary action by the
15 appropriate medical regulatory board of the physician.

16 B. Only a physician licensed pursuant to Section 480 et seq. or
17 Section 620 et seq. of Title 59 of the Oklahoma Statutes may
18 prescribe a controlled dangerous substance on the premises of a
19 registered pain management clinic. No person shall dispense any
20 controlled dangerous substance on the premises of a pain management
21 clinic.

22 C. A physician, a physician assistant or an Advanced Practice
23 Registered Nurse shall perform a physical examination of a patient
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1 on the same day that the physician prescribes a controlled substance
2 to a patient at a pain management clinic.

3 D. A physician authorized to prescribe controlled dangerous
4 substances who practices at a pain management clinic is responsible
5 for maintaining the control and security of his or her prescription
6 blanks and any other method used for prescribing controlled
7 dangerous substance pain medication. The physician shall notify, in
8 writing, the State Board of Medical Licensure and Supervision within
9 twenty-four (24) hours following any theft or loss of a prescription
10 blank or breach of any other method for prescribing pain medication.

11 E. The designated physician of a pain management clinic shall
12 notify the applicable board in writing of the date of termination of
13 employment within ten (10) calendar days after terminating his or
14 her employment with a pain management clinic that is required to be
15 registered pursuant to this act. Each physician practicing in a
16 pain management clinic shall advise the State Board of Medical
17 Licensure and Supervision, in writing, within ten (10) calendar days
18 after beginning or ending his or her practice at a pain management
19 clinic.

20 F. Each physician practicing in a pain management clinic is
21 responsible for ensuring compliance with the following facility and
22 physical operations requirements:

23 1. A pain management clinic shall be located and operated at a
24 publicly accessible fixed location and shall:

- a. display a sign that can be viewed by the public that contains the clinic name, hours of operations and a street address,
- b. have a publicly listed telephone number and a dedicated phone number to send and receive facsimiles,
- c. have a reception and waiting area,
- d. provide a restroom,
- e. have private patient examination rooms,
- f. have treatment rooms, if treatment is being provided to the patients, and
- g. display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the clinic's designated physician and the names of all physicians practicing in the clinic; and

2. This section does not excuse a physician from providing any treatment or performing any medical duty without the proper equipment and materials as required by the standard of care. This section does not supersede the level of care, skill or treatment recognized in general law related to health care licensure.

G. Each physician practicing in a pain management clinic is responsible for ensuring compliance with the following infection control requirements:

1 1. The clinic shall maintain equipment and supplies to support
2 infection prevention and control activities;

3 2. The clinic shall identify infection risks based on the
4 following:

- 5 a. geographic location, community and population served,
- 6 b. the care, treatment and services it provides, and
- 7 c. an analysis of its infection surveillance and control
8 data; and

9 3. The clinic shall maintain written infection prevention
10 policies and procedures that address the following:

- 11 a. prioritized risks,
- 12 b. limiting unprotected exposure to pathogens,
- 13 c. limiting the transmission of infections associated
14 with procedures performed in the clinic, and
- 15 d. limiting the transmission of infections associated
16 with the clinic's use of medical equipment, devices
17 and supplies.

18 H. Each physician practicing in a pain management clinic is
19 responsible for ensuring that the clinic, including its grounds,
20 buildings, furniture, appliances and equipment is structurally
21 sound, in good repair, clean and free from health and safety
22 hazards.

23 I. The designated physician is responsible for ensuring
24 compliance with the following quality assurance requirements:

1 1. Each pain management clinic shall have an ongoing quality
2 assurance program that objectively and systematically:

- 3 a. monitors and evaluates the quality and appropriateness
4 of patient care,
- 5 b. evaluates methods to improve patient care,
- 6 c. identifies and corrects deficiencies within the
7 facility,
- 8 d. alerts the designated physician to identify and
9 resolve recurring problems, and
- 10 e. provides for opportunities to improve the facility's
11 performance and to enhance and improve the quality of
12 care provided to the public; and

13 2. The designated physician shall establish a quality assurance
14 program that includes the following components:

- 15 a. the identification, investigation and analysis of the
16 frequency and causes of adverse incidents to patients,
- 17 b. the identification of trends or patterns of incidents,
- 18 c. the development of measures to correct, reduce,
19 minimize or eliminate the risk of adverse incidents to
20 patients, and
- 21 d. the documentation of these functions and periodic
22 review no less than quarterly of such information by
23 the designated physician.

1 J. The designated physician is responsible for ensuring
2 compliance with the following data collection and reporting
3 requirements:

4 1. The designated physician for each pain management clinic
5 shall report all adverse incidents to the State Board of Medical
6 Licensure and Supervision; and

7 2. The designated physician shall also report to the State
8 Board of Medical Licensure and Supervision, in writing, on a
9 quarterly basis the following data:

- 10 a. the number of new and repeat patients seen and treated
11 at the clinic who are prescribed controlled dangerous
12 substance medications for the treatment of chronic,
13 nonmalignant pain,
- 14 b. the number of patients discharged due to drug abuse,
- 15 c. the number of patients discharged due to drug
16 diversion, and
- 17 d. the number of patients treated at the clinic whose
18 domicile is located somewhere other than in this
19 state. A patient's domicile is the patient's fixed or
20 permanent home to which he or she intends to return
21 even though he or she may temporarily reside
22 elsewhere.

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1 K. The data and reports specified in subsection J of this
2 section shall be accessible to the Oklahoma State Bureau of
3 Narcotics and Dangerous Drugs Control.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 2-1104 of Title 63, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The State Board of Medical Licensure and Supervision may
8 impose an administrative fine on a clinic of up to Five Thousand
9 Dollars (\$5,000.00) per violation for violating the requirements of
10 this act or the rules of the State Board of Medical Licensure and
11 Supervision. In determining whether a penalty is to be imposed, and
12 in fixing the amount of the fine, the State Board of Medical
13 Licensure and Supervision shall consider the following factors:

14 1. The gravity of the violation, including the probability that
15 death or serious physical or emotional harm to a patient has
16 resulted, or could have resulted, from the pain management clinic's
17 actions or the actions of the physician, the severity of the action
18 or potential harm and the extent to which the provisions of the
19 applicable laws or rules were violated;

20 2. What actions, if any, the owner or designated physician took
21 to correct the violations;

22 3. Whether there were any previous violations at the pain
23 management clinic; and
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1 4. The financial benefits that the pain management clinic
2 derived from committing or continuing to commit the violation.

3 B. Each day a violation continues after the date fixed for
4 termination of the violation as ordered by the State Board of
5 Medical Licensure and Supervision constitutes an additional,
6 separate and distinct violation.

7 C. The State Board of Medical Licensure and Supervision may
8 impose a fine and, in the case of an owner-operated pain management
9 clinic, revoke or deny a pain management clinic's registration if
10 the clinic's designated physician knowingly and intentionally
11 misrepresents actions taken to correct a violation.

12 D. An owner or designated physician of a pain management clinic
13 who concurrently operates an unregistered pain management clinic is
14 subject to an administrative fine of Five Thousand Dollars
15 (\$5,000.00) per day.

16 E. If the owner of a pain management clinic that requires
17 registration fails to apply to register the clinic upon a change of
18 ownership and operates the clinic under the new ownership, the owner
19 is subject to a fine of Five Thousand Dollars (\$5,000.00).

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-1105 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 All affected agencies and boards shall promulgate such rules as
24 are necessary to implement the provisions of this act.

SECTION 6. This act shall become effective November 1, 2021.

COMMITTEE REPORT BY: COMMITTEE ON ALCOHOL, TOBACCO AND CONTROLLED
SUBSTANCES, dated 04/08/2021 - DO PASS, As Amended.