

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 242, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Standridge

Standridge-DC-FS-Req#2029
3/12/2019 4:36 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 242

By: Standridge of the Senate

and

Caldwell (Chad) of the
House

FLOOR SUBSTITUTE

[pain-management clinics - Board of Medical
Licensure and Supervision - registration procedures -
controlled dangerous substances - codification -
noncodification - effective date]

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

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

As used in this act:

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

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

5 3. "Pain-management clinic" or "clinic" means any publicly or
6 privately owned facility:

7 a. that advertises in any medium for any type of pain-
8 management services, or

9 b. where in any month a majority of patients are
10 prescribed opioids, benzodiazepines, barbiturates, or
11 carisoprodol for the treatment of chronic nonmalignant
12 pain.

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

16 A. Each pain-management clinic shall register with the Board of
17 Medical Licensure and Supervision unless:

18 1. The majority of the physicians who provide services in the
19 clinic primarily provide surgical services;

20 2. The clinic is owned by a publicly held corporation whose
21 shares are traded on a national exchange or on the over-the-counter
22 market and whose total assets at the end of the corporation's most
23 recent fiscal quarter exceeded Fifty Million Dollars
24 (\$50,000,000.00);

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

4 4. The clinic does not prescribe controlled dangerous
5 substances for the treatment of pain;

6 5. The clinic is owned by a corporate entity exempt from
7 federal taxation under 26 U.S.C., Section 501(c)(3) (1954);

8 6. The clinic is wholly owned and operated by one or more
9 board-eligible or board-certified anesthesiologists, physiatrists,
10 rheumatologists or neurologists; or

11 7. The clinic is wholly owned and operated by a physician
12 multispecialty practice where one or more board-eligible or board-
13 certified medical specialists, who have also completed fellowships
14 in pain medicine approved by the Accreditation Council for Graduate
15 Medical Education or who are also certified in pain medicine by the
16 American Board of Pain Medicine or a board approved by the American
17 Board of Medical Specialties, the American Association of Physician
18 Specialists or the American Osteopathic Association, perform
19 interventional pain procedures of the type routinely billed using
20 surgical codes.

21 B. Each clinic location shall be registered separately
22 regardless of whether the clinic is operated under the same business
23 name or management as another clinic.

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

15 D. The Board of Medical Licensure and Supervision shall deny
16 registration to any clinic that is not fully owned by a physician
17 licensed pursuant to Section 480 et seq. or Section 620 et seq. of
18 Title 59 of the Oklahoma Statutes or group of physicians, each of
19 whom is licensed pursuant to Section 480 et seq. or Section 620 et
20 seq. of Title 59 of the Oklahoma Statutes.

21 E. The Board of Medical Licensure and Supervision shall deny
22 registration to any pain-management clinic owned by or with any
23 contractual or employment relationship with a physician:
24

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

3 2. Whose application for a license to prescribe, dispense or
4 administer a controlled substance has been denied by any
5 jurisdiction;

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

12 F. If the Board of Medical Licensure and Supervision finds that
13 a pain-management clinic does not meet the requirement of subsection
14 D of this section or is owned, directly or indirectly, by a person
15 meeting any criteria listed in subsection E of this section, the
16 Board of Medical Licensure and Supervision shall revoke the
17 certificate of registration previously issued by the Board of
18 Medical Licensure and Supervision. As determined by rule, the Board
19 of Medical Licensure and Supervision may grant an exemption to
20 denying a registration or revoking a previously issued registration
21 if more than ten (10) years have elapsed since adjudication. As
22 used in this section, the term "convicted" includes an adjudication
23 of guilt following a plea of guilty or nolo contendere or the
24 forfeiture of a bond when charged with a crime.

1 G. If the registration of a pain-management clinic is revoked
2 or suspended, the designated physician of the pain-management
3 clinic, the owner or lessor of the pain-management clinic property,
4 the manager and the proprietor shall cease to operate the facility
5 as a pain-management clinic as of the effective date of the
6 suspension or revocation.

7 H. If a pain-management clinic registration is revoked or
8 suspended, the designated physician of the pain-management clinic,
9 the owner or lessor of the clinic property, the manager or the
10 proprietor is responsible for removing all signs and symbols
11 identifying the premises as a pain-management clinic.

12 I. If the clinic's registration is revoked, any person named in
13 the registration documents of the pain-management clinic, including
14 persons owning or operating the pain-management clinic, shall not,
15 as an individual or as a part of a group, apply to operate a pain-
16 management clinic for five (5) years after the date the registration
17 is revoked.

18 J. The period of suspension for the registration of a pain-
19 management clinic shall be prescribed by the Board of Medical
20 Licensure and Supervision, but shall not exceed one (1) year.

21 K. A change of ownership of a registered pain-management clinic
22 requires submission of a new registration application.

1 SECTION 3. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 2-1103 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

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

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

20 C. A physician, a physician assistant or an Advanced Practice
21 Registered Nurse shall perform a physical examination of a patient
22 on the same day that the physician prescribes a controlled substance
23 to a patient at a pain-management clinic. If the physician
24 prescribes more than a seventy-two-hour dose of controlled dangerous

1 substances for the treatment of chronic nonmalignant pain, the
2 physician shall document in the patient's record the reason for
3 prescribing that quantity.

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

12 E. The designated physician of a pain-management clinic shall
13 notify the applicable board in writing of the date of termination of
14 employment within ten (10) calendar days after terminating his or
15 her employment with a pain-management clinic that is required to be
16 registered pursuant to this act. Each physician practicing in a
17 pain-management clinic shall advise the Board of Medical Licensure
18 and Supervision, in writing, within ten (10) calendar days after
19 beginning or ending his or her practice at a pain-management 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 with a facsimile machine that shall be operational twenty-four (24) hours per day,
- c. have emergency lighting and communications,
- d. have a reception and waiting area,
- e. provide a restroom,
- f. have an administrative area, including room for storage of medical records, supplies and equipment,
- g. have private patient examination rooms,
- h. have treatment rooms, if treatment is being provided to the patients, and
- i. 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

1 section does not supersede the level of care, skill or treatment
2 recognized in general law related to health care licensure.

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

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

8 2. The clinic shall identify infection risks based on the
9 following:

- 10 a. geographic location, community and population served,
- 11 b. the care, treatment and services it provides, and
- 12 c. an analysis of its infection surveillance and control
13 data; and

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

- 16 a. prioritized risks,
- 17 b. limiting unprotected exposure to pathogens,
- 18 c. limiting the transmission of infections associated
19 with procedures performed in the clinic, and
- 20 d. limiting the transmission of infections associated
21 with the clinic's use of medical equipment, devices
22 and supplies.

1 H. Each physician practicing in a pain-management clinic is
2 responsible for ensuring compliance with the following health and
3 safety requirements:

4 1. The clinic, including its grounds, buildings, furniture,
5 appliances and equipment shall be structurally sound, in good
6 repair, clean and free from health and safety hazards;

7 2. The clinic shall have evacuation procedures in the event of
8 an emergency, which shall include provisions for the evacuation of
9 disabled patients and employees;

10 3. The clinic shall have a written facility-specific disaster
11 plan setting forth actions that will be taken in the event of clinic
12 closure due to unforeseen disasters and shall include provisions for
13 the protection of medical records; and

14 4. Each clinic shall have at least one employee on the premises
15 during patient care hours who is certified in basic life support and
16 is trained in reacting to accidents and medical emergencies until
17 emergency medical personnel arrive.

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

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

22 a. monitors and evaluates the quality and appropriateness
23 of patient care,

24 b. evaluates methods to improve patient care,

- c. identifies and corrects deficiencies within the facility,
- d. alerts the designated physician to identify and resolve recurring problems, and
- e. provides for opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public; and

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

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

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

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

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

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

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

20 A. The Board of Medical Licensure and Supervision may impose an
21 administrative fine on a clinic of up to Five Thousand Dollars
22 (\$5,000.00) per violation for violating the requirements of this act
23 or the rules of the Board of Medical Licensure and Supervision. In
24 determining whether a penalty is to be imposed, and in fixing the

1 amount of the fine, the Board of Medical Licensure and Supervision
2 shall consider the following factors:

3 1. The gravity of the violation, including the probability that
4 death or serious physical or emotional harm to a patient has
5 resulted, or could have resulted, from the pain-management clinic's
6 actions or the actions of the physician, the severity of the action
7 or potential harm and the extent to which the provisions of the
8 applicable laws or rules were violated;

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

11 3. Whether there were any previous violations at the pain-
12 management clinic; and

13 4. The financial benefits that the pain-management clinic
14 derived from committing or continuing to commit the violation.

15 B. Each day a violation continues after the date fixed for
16 termination of the violation as ordered by the Board of Medical
17 Licensure and Supervision constitutes an additional, separate and
18 distinct violation.

19 C. The Board of Medical Licensure and Supervision may impose a
20 fine and, in the case of an owner-operated pain-management clinic,
21 revoke or deny a pain-management clinic's registration, if the
22 clinic's designated physician knowingly and intentionally
23 misrepresents actions taken to correct a violation.

1 D. An owner or designated physician of a pain-management clinic
2 who concurrently operates an unregistered pain-management clinic is
3 subject to an administrative fine of Five Thousand Dollars
4 (\$5,000.00) per day.

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

9 SECTION 5. AMENDATORY 63 O.S. 2011, Section 2-312, is
10 amended to read as follows:

11 Section 2-312. A. A physician, podiatrist, optometrist or a
12 dentist who has complied with the registration requirements of the
13 Uniform Controlled Dangerous Substances Act, in good faith and in
14 the course of such person's professional practice only, may
15 prescribe and administer controlled dangerous substances pursuant to
16 the provisions of Section 355.2 of Title 59 of the Oklahoma
17 Statutes, or may cause the same to be administered by medical or
18 paramedical personnel acting under the direction and supervision of
19 the physician, podiatrist, optometrist or dentist, ~~and only may but~~
20 shall not dispense controlled dangerous substances except samples
21 pursuant to the provisions of Sections 355, 355.1 and 355.2 of Title
22 59 of the Oklahoma Statutes. A sample of a particular controlled
23 dangerous substance may be dispensed to a patient one time in an
24 amount not to exceed an amount necessary for thirty (30) days. The

1 restrictions on dispensing controlled dangerous substances set forth
2 in this subsection shall not apply to substance abuse treatment
3 programs or services.

4 B. A veterinarian who has complied with the registration
5 requirements of the Uniform Controlled Dangerous Substances Act, in
6 good faith and in the course of the professional practice of the
7 veterinarian only, and not for use by a human being, may prescribe,
8 administer, and dispense controlled dangerous substances and may
9 cause them to be administered by an assistant or orderly under the
10 direction and supervision of the veterinarian.

11 C. An advanced practice nurse who is recognized to prescribe by
12 the Oklahoma Board of Nursing as an advanced registered nurse
13 practitioner, clinical nurse specialist or certified nurse-midwife,
14 who is subject to medical direction by a supervising physician,
15 pursuant to Section 567.3a of Title 59 of the Oklahoma Statutes, and
16 who has complied with the registration requirements of the Uniform
17 Controlled Dangerous Substances Act, in good faith and in the course
18 of professional practice only, may prescribe and administer Schedule
19 III, IV and V controlled dangerous substances.

20 D. An advanced practice nurse who is recognized to order,
21 select, obtain and administer drugs by the Oklahoma Board of Nursing
22 as a certified registered nurse anesthetist pursuant to Section
23 353.1b of Title 59 of the Oklahoma Statutes and who has complied
24 with the registration requirements of the Uniform Controlled

1 Dangerous Substances Act, in good faith and in the course of such
2 practitioner's professional practice only, may order, select, obtain
3 and administer Schedules II through V controlled dangerous
4 substances in a preanesthetic preparation or evaluation; anesthesia
5 induction, maintenance or emergence; or postanesthesia care setting
6 only. A certified registered nurse anesthetist may order, select,
7 obtain and administer such drugs only during the perioperative or
8 periobstetrical period.

9 E. A physician assistant who is recognized to prescribe by the
10 State Board of Medical Licensure and Supervision under the medical
11 direction of a supervising physician, pursuant to subsection D of
12 Section 519.6 of Title 59 of the Oklahoma Statutes, and who has
13 complied with the registration requirements of the Uniform
14 Controlled Dangerous Substances Act, in good faith and in the course
15 of professional practice only, may prescribe and administer Schedule
16 II through V controlled dangerous substances.

17 SECTION 6. SECTION 6. NEW LAW A new section of law
18 not to be codified in the Oklahoma Statutes reads as follows:

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

21 SECTION 7. This act shall become effective November 1, 2019.

22
23 57-1-2029 DC 3/12/2019 4:36:17 PM
24