

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB888 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Jon Echols

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 888

By: Standridge of the Senate

and

Echols of the House

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to controlled dangerous substances; defining terms; requiring pain management clinics to register with State Board of Medical Licensure and Supervision; providing exemptions; stipulating registration procedures; requiring clinics to designate physician; providing for the denial, revocation or suspension of registration under certain circumstances; defining term; requiring facility operations to cease when registration is revoked or suspended; requiring removal of signage; prohibiting person from applying to operate pain management clinic for certain period of time after 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; amending
4 59 O.S. 2011, Section 355.1, as amended by Section
5 21, Chapter 230, O.S.L. 2015 (59 O.S. Supp. 2020,
6 Section 355.1), which relates to the dispensation of
7 dangerous drugs; providing certain limitations when
8 dispensing controlled dangerous substances; providing
9 an exception; providing for codification; and
10 providing an effective date.

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

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

15 As used in this act:

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

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

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

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

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

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

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

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

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

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

5. The clinic is wholly owned and operated by a physician multispecialty practice where one or more board-eligible or board-certified medical specialists, who have also completed fellowships

1 in pain medicine approved by the Accreditation Council for Graduate
2 Medical Education or who are also certified in pain medicine by the
3 American Board of Pain Medicine or a board approved by the American
4 Board of Physician Specialties, the American Association of
5 Physician Specialists or the American Osteopathic Association,
6 perform interventional pain procedures of the type routinely billed
7 using surgical codes.

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

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

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.

1 SECTION 6. AMENDATORY 59 O.S. 2011, Section 355.1, as
2 amended by Section 21, Chapter 230, O.S.L. 2015 (59 O.S. Supp. 2020,
3 Section 355.1), is amended to read as follows:

4 Section 355.1 A. Except as provided for in Section 353.1 et
5 seq. of this title, only a licensed practitioner may dispense
6 dangerous drugs to such practitioner's patients, and only for the
7 expressed purpose of serving the best interests and promoting the
8 welfare of such patients. The dangerous drugs shall be dispensed in
9 an appropriate container to which a label has been affixed. Such
10 label shall include the name and office address of the licensed
11 practitioner, date dispensed, name of patient, directions for
12 administration, prescription number, the trade or generic name and
13 the quantity and strength, not meaning ingredients, of the drug
14 therein contained; provided, this requirement shall not apply to
15 compounded medicines. The licensed practitioner shall keep a
16 suitable book, file or record in which shall be preserved for a
17 period of not less than five (5) years a record of every dangerous
18 drug compounded or dispensed by the licensed practitioner.

19 B. A prescriber desiring to dispense dangerous drugs pursuant
20 to this section shall register annually with the appropriate
21 licensing board as a dispenser, through a regulatory procedure
22 adopted and prescribed by such licensing board.

1 C. A prescriber who dispenses professional samples to patients
2 shall be exempt from the requirement of subsection B of this section
3 if:

4 1. The prescriber furnishes the professional samples to the
5 patient in the package provided by the manufacturer;

6 2. No charge is made to the patient; and

7 3. An appropriate record is entered in the patient's chart.

8 D. This section shall not apply to the services provided
9 through the State Department of Health, city/county health
10 departments, or the Department of Mental Health and Substance Abuse
11 Services.

12 E. This section shall not apply to organizations and services
13 incorporated as state or federal tax-exempt charitable nonprofit
14 entities and/or organizations and services receiving all or part of
15 their operating funds from a local, state or federal governmental
16 entity; provided, such organizations and services shall comply with
17 the labeling and recordkeeping requirements set out in subsection A
18 of this section.

19 F. A prescriber who issues a prescription for a controlled
20 dangerous substance shall not dispense the controlled dangerous
21 substance pursuant to such prescription. A prescriber shall not
22 dispense a controlled dangerous substance pursuant to a prescription
23 issued by another prescriber if the dispensing prescriber has a
24 financial interest in the practice of the prescribing prescriber.

1 The restrictions on dispensing of controlled dangerous substances
2 provided by this subsection shall not apply to substance abuse
3 treatment programs or services.

4 SECTION 7. This act shall become effective November 1, 2021.

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