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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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**2015 Assembly Bill 366**

**Assembly Substitute  
Amendment 1, as Amended**

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**2015 ASSEMBLY BILL 366, AS PASSED BY THE ASSEMBLY**

Assembly Bill 366 requires pain clinics to be certified by the Department of Health Services (DHS) in order to operate. The bill, as passed by the Assembly, is described below.<sup>1</sup>

**Definition of “Pain Clinic”**

Under the bill, a “pain clinic” is either of the following:

- A privately owned facility where a majority of the health care providers, practicing within the scope of their licenses, devotes a majority of their practices to the treatment of pain syndromes through the practice of pain medicine.
- A privately owned facility that advertises or otherwise holds itself out as providing pain medicine or interventional pain medicine services and that has one or more employees or contractors who prescribe opioids or opiates, benzodiazepines, barbiturates, or carisoprodol as chronic therapy for pain syndromes.<sup>2</sup>

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<sup>1</sup> All references to “the bill” in this memorandum refer to the bill as passed by the Assembly.

<sup>2</sup> Under the bill, “pain medicine” means the branch of medicine devoted to the diagnosis and treatment of pain syndromes through treatments, including prescription of a monitored prescription drug; “interventional pain medicine” means the branch of medicine and surgery devoted to the diagnosis and treatment of pain syndromes through the use of invasive techniques; and “pain syndrome” means pain that is reasonably anticipated to persist, or has persisted, beyond the time frame for normal healing or pain that is reasonably anticipated to persist, or has persisted, for more than three months.

The bill provides that the following are not pain clinics and are not required to be certified:

- A medical or dental school, nursing school, physician assistant training program.
- An outpatient clinic associated with a school or training program.
- A hospital, hospice, or nursing home.

In addition, a pain clinic at which health care providers do not regularly prescribe monitored prescription drugs to a patient for more than 90 days in a 12-month period is not required to be certified.

### **Certification and Operation Requirements**

The bill contains the following provisions governing the certification and operation of pain clinics:

#### **Certificate Required to Operate**

An entity that meets the definition of pain clinic, other than those that are exempt as described above, must be certified by DHS to operate. DHS must issue a certificate of operation to a pain clinic if it finds that it meets the requirements for certification, including any requirements established by DHS, and pays the application fee required by DHS.

A pain clinic that is already operating when the certification requirement goes into effect may continue to operate without a certificate if it submits an application for a certificate within 30 days after DHS publishes the certificate application form on its Internet site.

A certificate is valid for three years and may be renewed.

A certified pain clinic that undergoes a change of majority ownership must submit a new application for a certificate.

#### **DHS Rules Governing Pain Clinic Operations**

The bill authorizes DHS, after consulting with the Medical Examining Board, to promulgate administrative rules to govern the operation of pain clinics as DHS finds necessary to provide safety to the public.

#### **Penalties**

If DHS finds that a pain clinic that was issued a certificate under this section no longer meets any requirement for certification, DHS may do any of the following:

1. Suspend the certificate of the pain clinic until the department determines that the pain clinic demonstrates compliance.
2. Revoke the certificate of the pain clinic.
3. Impose a forfeiture of up to \$1,000 per day for each day of continued violation.

### **Prior Convictions**

DHS may not issue a certificate of operation to a pain clinic if the owner has been convicted of a felony or found guilty of a misdemeanor related to the distribution of an illegal prescription drug or controlled substance.

### **Medical Director**

A pain clinic must have a medical director who is a physician that practices in Wisconsin. If the medical director no longer meets the requirements of holding the position, the pain clinic must notify DHS within 10 business days of the identity of a new medical director. DHS may suspend the certification of a pain clinic that fails to notify DHS of an acting medical director within 10 days of the departure of the previous medical director.

### **Payment Methods and Records**

A pain clinic may only accept payment by insurance coverage, credit, a credit card, a check, a draft, or another form of payment that is traceable to the individual seeking treatment. If an individual has submitted a claim to an insurance company, he or she may pay any copayment, coinsurance, or deductible with cash or another payment method that is not traceable. A pain clinic must retain records of payment.

### **Direct Dispensing**

A pain clinic may not directly dispense an oral prescription drug that is monitored under the Prescription Drug Monitoring Program (PDMP), unless the pain clinic is licensed as a pharmacy or the patient is being treated for a condition or complaint reasonably related to a worker's compensation claim.

### **Multiple Locations**

A business entity that owns more than one pain clinic may apply for a single certificate for all pain clinics it owns, if it submits the following information to DHS: (a) a listing of each pain clinic site; (b) the number of days each week each pain clinic site operates; and (c) the names of the health care providers who are working on each day of operation at each site.

### **Regulation of Professions**

The bill specifies that it does not confer authority on DHS to regulate the profession or practice of a health care provider whose profession is regulated by the Department of Safety and Professional Services (DSPS) or an examining board attached to DSPS.

### **BILL HISTORY**

On January 12, 2016, the Assembly adopted Assembly Amendment 1 to Assembly Substitute Amendment 1, adopted Assembly Substitute Amendment 1, as amended, and passed the bill, as amended, all on voice votes.