2015 ASSEMBLY BILL 366

September 25, 2015 – Introduced by Representatives NYGREN, PETRYK, NOVAK, TAUCHEN, SWEARINGEN, SPIROS, JÄGLER, A. OTT, RIPP, KOLSTE, KERKMAN, GOYKE, SCHRAA, HORLACHER, MURTHA, EDMING, VANDERMEER, ALLEN, E. BROOKS, KUGLITSCH, MURSAU, MACCO, SANFELIPPO, BORN, SKOWRONSKI, J. OTT, OHNSTAD, SINICKI, LOUDENBECK, GENRICH, MEYERS, SPREITZER, BARCA, PETERSEN, SUBECK and BILLINGS, cosponsored by Senators DARLING, GUDEX, HARSDORF, MARKLEIN, OLSEN, PETROWSKI and COWLES. Referred to Committee on Health.

AN ACT to repeal subchapter IV (title) of chapter 50 [precedes 50.90]; to amend 20.435 (6) (jm), 50.56 (3), 146.40 (1) (bo), 146.81 (1) (L) and 146.997 (1) (d) 18.; and to create subchapter V (title) of chapter 50 [precedes 50.60], 50.60, 50.65 and subchapter VI (title) of chapter 50 [precedes 50.90] of the statutes; relating to: pain clinic certification and requirements, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires certification of a pain clinic in order for it to operate. A pain clinic must submit an application to the Department of Health Services (DHS), which is required to issue the certificate of operation if the pain clinic meets the requirements specified in the bill, has paid any required application fee, and meets any requirements established by DHS. Each pain clinic location is certified separately regardless of whether the clinic is operated under the same business name, ownership, or management as another pain clinic. The bill requires a pain clinic to have a medical director who is a physician that practices in Wisconsin and requires a pain clinic to report annually to DHS certain information specified in the bill. The bill also requires a physician or other health care provider at a pain clinic authorized to prescribe pain medication to review for treatment purposes an individual’s records on the prescription drug monitoring database for use of other pain medications.
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.435 (6) (jm) of the statutes is amended to read:

20.435 (6) (jm) Licensing and support services. The amounts in the schedule for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a), (am), (b), and (bm), and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b) and (er), and subch. IV VI of ch. 50 and to conduct health facilities plan and rule development activities, for accrediting nursing homes, convalescent homes, and homes for the aged, to conduct capital construction and remodeling plan reviews under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection. All moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025, 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection, and all moneys received under s. 50.135 (2) shall be credited to this appropriation account.

SECTION 2. 50.56 (3) of the statutes is amended to read:

50.56 (3) Notwithstanding sub. (2), insofar as a conflict exists between this subchapter, or the rules promulgated under this subchapter, and subch. I, II or IV
VI, or the rules promulgated under subch. I, II or IV VI, the provisions of this
subchapter and the rules promulgated under this subchapter control.

SECTION 3. Subchapter V (title) of chapter 50 [precedes 50.60] of the statutes
is created to read:

CHAPTER 50

SUBCHAPTER V

CLINICS

SECTION 4. 50.60 of the statutes is created to read:

50.60 Definitions; clinics. In this subchapter: (1) “Advanced practice nurse
prescriber” means an individual certified under s. 441.16 (2).

(2) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (hp).

(3) “Pain clinic” means any of the following:

(a) A privately owned facility at which a physician, advanced practice nurse
prescriber, physician assistant, or other health care provider with prescribing
privileges, who prescribes controlled substances, provides pain management
services to patients, a majority of whom are prescribed opioids or opiates,
benzodiazepines, barbiturates, or carisoprodol, and provides prescriptions for more
than 90 days in a 12-month period.

(b) Any privately owned facility or office that advertises or otherwise holds
itself out as providing pain management services and that has one or more employees
or contractors who prescribe a controlled substance for pain management.

(4) “Physician assistant” has the meaning given in s. 448.01 (6).

SECTION 5. 50.65 of the statutes is created to read:

50.65 Pain clinics. (1) Certification required. (a) No pain clinic may
operate unless it holds a certificate to operate issued by the department.
(b) A pain clinic shall submit to the department an application, on a form prescribed by the department, for a certificate. Each pain clinic location is certified separately regardless of whether the clinic is operated under the same business name, ownership, or management as another pain clinic. The department may charge an applicant a fee for applying for a certificate.

(c) A certified pain clinic that undergoes a change of majority ownership shall submit a new application for a certificate.

(d) A pain clinic shall have a medical director who is a physician that practices in this state. In the event that the medical director no longer meets the requirements of holding the position of medical director, the pain clinic shall notify the department within 10 business days of the identity of a physician who meets the requirements of medical director and who acts as medical director at that pain clinic. Failure to notify the department of an acting medical director within 10 days of the departure of the previous medical director may be a basis for the department to suspend the pain clinic's certification.

(e) The department shall issue a certificate of operation to a pain clinic if the department finds that the pain clinic meets the requirements of this section, has paid any application fee required by the department, and meets any requirements established by the department.

(2) **Penalty for Violation.** (a) If the department finds that a pain clinic which was issued a certificate under this section no longer meets any requirement of this section or rules promulgated under this section or of requirements established by the department, the department 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.

(b) A pain clinic subject to a penalty under par. (a) is entitled to an appeal and a hearing under ch. 227.

(3) Reporting. (a) Annually, a pain clinic shall report to the department all of the following:

1. The ratio of pain clinic staff to the number of individuals receiving pain treatment.

2. The number of individuals receiving pain treatment who are also receiving behavioral health services.

3. The pain clinic staff’s plan for tapering individuals off of pain medications, if applicable.

4. The average mileage that individuals receiving pain treatment in the pain clinic are traveling to receive treatment in that clinic.

(b) The pain clinic shall ensure that the information under par. (a) is provided in a manner that does not permit the identification of an individual who is receiving pain medication from the pain clinic.

(4) Prescription monitoring. Before prescribing a pain medication, a physician or other health care provider at a pain clinic who is authorized to prescribe pain medication shall review for treatment purposes an individual’s records on the prescription drug monitoring database for use of other pain medications.

(5) Applicability. This section does not apply to any of the following:

(a) A medical or dental school, nursing school, physician assistant training program, or outpatient clinic associated with any of the schools or training programs specified in this paragraph.
(b) A hospital, as defined in s. 50.33 (2).

(c) Hospice, as defined in s. 50.90 (1).

(d) A nursing home, as defined in s. 50.01 (3).

(6) Rules. The department may promulgate rules it determines are necessary to implement this section.

SECTION 6. Subchapter VI (title) of chapter 50 [precedes 50.90] of the statutes is created to read:

CHAPTER 50

SUBCHAPTER VI

HOSPICES

SECTION 7. Subchapter IV (title) of chapter 50 [precedes 50.90] of the statutes is repealed.

SECTION 8. 146.40 (1) (bo) of the statutes is amended to read:

146.40 (1) (bo) “Hospice” means a hospice that is licensed under subch. IV IV of ch. 50.

SECTION 9. 146.81 (1) (L) of the statutes is amended to read:

146.81 (1) (L) A hospice licensed under subch. IV VI of ch. 50.

SECTION 10. 146.997 (1) (d) 18. of the statutes is amended to read:

146.997 (1) (d) 18. A hospice licensed under subch. IV VI of ch. 50.


(1) Notwithstanding section 50.65 (1) (a) of the statutes, a pain clinic, as defined in section 50.60 (3) of the statutes, that is operating on the effective date of this subsection may continue to operate without the certificate required under section 50.65 (1) (a) of the statutes if the pain clinic submits an application for a certificate
under section 50.65 (1) of the statutes within 30 days after the date the department of health services publishes the certificate application form on its Internet site.

(END)