



2015 ASSEMBLY BILL 366

September 25, 2015 - Introduced by Representatives NYGREN, PETRYK, NOVAK, TAUCHEN, SWEARINGEN, SPIROS, JAGLER, 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.

1 **AN ACT** *to repeal* subchapter IV (title) of chapter 50 [precedes 50.90]; *to amend*
2 20.435 (6) (jm), 50.56 (3), 146.40 (1) (bo), 146.81 (1) (L) and 146.997 (1) (d) 18.;
3 and *to create* subchapter V (title) of chapter 50 [precedes 50.60], 50.60, 50.65
4 and subchapter VI (title) of chapter 50 [precedes 50.90] of the statutes; **relating**
5 **to:** pain clinic certification and requirements, granting rule-making authority,
6 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.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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

2 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
3 for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a), (am), (b), and (bm),
4 and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and
5 (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and
6 146.40 (4r) (b) and (er), and subch. ~~IV~~ VI of ch. 50 and to conduct health facilities plan
7 and rule development activities, for accrediting nursing homes, convalescent homes,
8 and homes for the aged, to conduct capital construction and remodeling plan reviews
9 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or
10 certifying, and approving facilities, issuing permits, and providing technical
11 assistance, that are not specified under any other paragraph in this subsection. All
12 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
13 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
14 50.981, all moneys received from fees for the costs of inspecting, licensing or
15 certifying, and approving facilities, issuing permits, and providing technical
16 assistance, that are not specified under any other paragraph in this subsection, and
17 all moneys received under s. 50.135 (2) shall be credited to this appropriation
18 account.

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

20 50.56 (3) Notwithstanding sub. (2), insofar as a conflict exists between this
21 subchapter, or the rules promulgated under this subchapter, and subch. I, II or ~~IV~~

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1 VI, or the rules promulgated under subch. I, II or IV VI, the provisions of this
2 subchapter and the rules promulgated under this subchapter control.

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

CHAPTER 50**SUBCHAPTER V****CLINICS**

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

9 **50.60 Definitions; clinics.** In this subchapter: (1) “Advanced practice nurse
10 prescriber” means an individual certified under s. 441.16 (2).

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

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

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

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

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

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

24 **50.65 Pain clinics.** (1) CERTIFICATION REQUIRED. (a) No pain clinic may
25 operate unless it holds a certificate to operate issued by the department.

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1 (b) A pain clinic shall submit to the department an application, on a form
2 prescribed by the department, for a certificate. Each pain clinic location is certified
3 separately regardless of whether the clinic is operated under the same business
4 name, ownership, or management as another pain clinic. The department may
5 charge an applicant a fee for applying for a certificate.

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

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

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

20 **(2) PENALTY FOR VIOLATION.** (a) If the department finds that a pain clinic which
21 was issued a certificate under this section no longer meets any requirement of this
22 section or rules promulgated under this section or of requirements established by the
23 department, the department may do any of the following:

24 1. Suspend the certificate of the pain clinic until the department determines
25 that the pain clinic demonstrates compliance.

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- 1 2. Revoke the certificate of the pain clinic.
- 2 3. Impose a forfeiture of up to \$1,000 per day for each day of continued violation.
- 3 (b) A pain clinic subject to a penalty under par. (a) is entitled to an appeal and
- 4 a hearing under ch. 227.
- 5 **(3) REPORTING.** (a) Annually, a pain clinic shall report to the department all
- 6 of the following:
- 7 1. The ratio of pain clinic staff to the number of individuals receiving pain
- 8 treatment.
- 9 2. The number of individuals receiving pain treatment who are also receiving
- 10 behavioral health services.
- 11 3. The pain clinic staff's plan for tapering individuals off of pain medications,
- 12 if applicable.
- 13 4. The average mileage that individuals receiving pain treatment in the pain
- 14 clinic are traveling to receive treatment in that clinic.
- 15 (b) The pain clinic shall ensure that the information under par. (a) is provided
- 16 in a manner that does not permit the identification of an individual who is receiving
- 17 pain medication from the pain clinic.
- 18 **(4) PRESCRIPTION MONITORING.** Before prescribing a pain medication, a
- 19 physician or other health care provider at a pain clinic who is authorized to prescribe
- 20 pain medication shall review for treatment purposes an individual's records on the
- 21 prescription drug monitoring database for use of other pain medications.
- 22 **(5) APPLICABILITY.** This section does not apply to any of the following:
- 23 (a) A medical or dental school, nursing school, physician assistant training
- 24 program, or outpatient clinic associated with any of the schools or training programs
- 25 specified in this paragraph.

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1 (b) A hospital, as defined in s. 50.33 (2).

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

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

4 **(6) RULES.** The department may promulgate rules it determines are necessary
5 to implement this section.

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

8 **CHAPTER 50**

9 **SUBCHAPTER VI**

10 **HOSPICES**

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

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

14 146.40 (1) (bo) "Hospice" means a hospice that is licensed under subch. ~~IV~~ VI
15 of ch. 50.

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

17 146.81 (1) (L) A hospice licensed under subch. ~~IV~~ VI of ch. 50.

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

19 146.997 (1) (d) 18. A hospice licensed under subch. ~~IV~~ VI of ch. 50.

20 **SECTION 11. Nonstatutory provisions.**

21 (1) Notwithstanding section 50.65 (1) (a) of the statutes, a pain clinic, as defined
22 in section 50.60 (3) of the statutes, that is operating on the effective date of this
23 subsection may continue to operate without the certificate required under section
24 50.65 (1) (a) of the statutes if the pain clinic submits an application for a certificate

