

BILL ANALYSIS

Senate Research Center

S.B. 911
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legitimate practice of pain management has a valuable role in the medical community. However, some pain management clinics engage in illegal drug diversion and cause great harm to their communities and the state. There has been explosive growth in the market for controlled substances and part of the problem is the proliferation of these "pill mills." One explanation for the proliferation in Texas is that Louisiana passed legislation that requires pain management clinics to be licensed and therefore shut down most of the illicit clinics in that state.

S.B. 911 prohibits a pain management clinic from operating in this state unless the clinic is certified. The bill provides that a certificate expires every two years. The bill requires the Texas Medical Board to adopt certain rules to ensure quality of patient care and personnel requirements for the clinic, including requirements for a physician who practices at a clinic.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 1 (Section 167.051, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 3, Occupations Code, by adding Chapter 167, as follows:

CHAPTER 167. REGULATION OF PAIN MANAGEMENT CLINICS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 167.001. DEFINITION. Defines "pain management clinic."

Sec. 167.002. EXEMPTIONS. Provides that this chapter does not apply to a medical or dental school or an outpatient clinic associated with a medical or dental school; a hospital, including any outpatient facility or clinic of a hospital; a hospice established under 40 T.A.C. Section 97.403 (Standards Specific to Agencies Licensed to Provide Hospice Services) or defined by 42 C.F.R. Section 418.3 (relating to conditions of participation for hospice); a facility maintained or operated by this state; a clinic maintained or operated by the United States; a health organization certified by the Texas Medical Board (TMB) under Section 162.001 (Certification by Board); a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and uses other forms of treatment with the issuance of a prescription for a majority of the patients.

[Reserves Sections 167.003-167.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD.

Sec. 167.051. ADOPTION OF RULES. (a) Requires TMB to adopt rules necessary to implement this chapter, including rules to address, for a pain management clinic the operation of the clinic; personnel requirements for the clinic, including requirements for a physician who practices at a clinic; standards to ensure quality of patient care; certificate

application and renewal procedures and requirements; inspections and complaint investigations; and patient billing procedures.

Sec. 167.052. INSPECTIONS. Authorizes TMB to inspect a pain management clinic, including the documents of a physician practicing at the clinic, as necessary to ensure compliance with this chapter.

Sec. 167.053. COMPLAINTS. Requires TMB to investigate a complaint alleging a violation of this chapter or a rule adopted under this chapter by a pain management clinic certified under this chapter or a physician who owns or operates a clinic in the same manner as other complaints under this subtitle.

[Reserves Sections 167.054-167.100 for expansion.]

SUBCHAPTER C. CERTIFICATION OF CLINIC

Sec. 167.101. CERTIFICATE REQUIRED. (a) Prohibits a pain management clinic from operating in this state unless the clinic is certified under this chapter.

(b) Provides that a certificate issued under this chapter is not transferrable or assignable.

Sec. 167.102. CERTIFICATE APPLICATION AND ISSUANCE. (a) Requires a physician who owns or operates a pain management clinic to apply for a certificate for the clinic under this chapter. Requires that a pain management clinic be owned and operated by a medical director who is a physician who practices in this state under an unrestricted license.

(b) Requires an applicant for a certificate under this chapter to submit an application to TMB on a form prescribed by TMB.

(c) Requires TMB to issue a certificate if TMB finds that the clinic meets the requirements of this chapter and the standards adopted by TMB under this chapter.

[Reserves Sections 167.103-167.150 for expansion.]

SUBCHAPTER D. CERTIFICATE RENEWAL

Sec. 167.151. EXPIRATION OF CERTIFICATE. (a) Provides that a certificate issued under this chapter expires on the second anniversary of the date it is issued.

(b) Requires TMB to grant a 180-day grace period from the expiration date of a certificate to renew the license.

(c) Prohibits the owner or operator of a pain management clinic for which a certificate has expired from continuing to operate the clinic until the clinic's certificate is renewed.

Sec. 167.152. REQUIREMENTS FOR RENEWAL. (a) Authorizes the owner or operator of a pain management clinic to apply to renew a certificate issued to the clinic under this chapter by submitting a renewal application TMB on the form prescribed by TMB before the expiration of the grace period under Section 167.151 and complying with any other requirements adopted by TMB rule.

(b) Requires the clinic, if a certificate is not renewed before the expiration of the grace period under Section 167.151, to reapply for an original certificate to operate the clinic.

[Reserves Sections 167.153-167.200 for expansion.]

SUBCHAPTER E. REGULATION OF CLINICS; ENFORCEMENT

Sec. 167.201. REGULATION OF PERSON AFFILIATED WITH CLINIC. (a) Prohibits the owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services from having been denied, by any jurisdiction, a license under which the person is authorized to prescribe, dispense, administer, supply, or sell a controlled substance; having held a license issued by any jurisdiction under which the person is authorized to prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or having been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(b) Prohibits a clinic from being owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for an offense that constitutes a felony; or an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Section 551.003(11) (relating to the definition of a controlled substance).

(c) Requires the owner or operator of a pain management clinic to be on-site at the clinic at least 33 percent of the clinic's total number of operating hours; and review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic.

Sec. 167.202. DISCIPLINARY ACTION. (a) Provides that a violation of this chapter or a rule adopted under this chapter is grounds for disciplinary action against a pain management clinic certified under this chapter, or an owner or operator of a clinic certified under this chapter.

(b) Authorizes a violation of this chapter to be enforced in the same manner as any other violation of this subtitle.

SECTION 2. (a) Requires TMB, not later than March 1, 2010, to adopt the rules required by Chapter 167, Occupations Code, as added by this Act.

(b) Requires a pain management clinic, notwithstanding Section 167.101, Occupations Code, as added by this Act, to obtain a certificate required by that section not later than September 1, 2010.

SECTION 3. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Section 167.101, Occupations Code, as added by this Act: September 1, 2010.