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Chapter 775

AN ACT

1
2 relating to the certification and regulation of pain management
3 clinics.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle B, Title 3, Occupations Code, is
6 amended by adding Chapter 167 to read as follows:

7 CHAPTER 167. REGULATION OF PAIN MANAGEMENT CLINICS

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 167.001. DEFINITION. In this chapter, ("pain
10 management clinic" means a publicly or privately owned facility for
11 which a majority of patients are issued on a monthly basis a
12 prescription for opioids, benzodiazepines, barbiturates, or
13 carisoprodol, but not including suboxone.

14 Sec. 167.002. EXEMPTIONS. This chapter does not apply to:

15 (1) a medical or dental school or an outpatient clinic
16 associated with a medical or dental school;

17 (2) a hospital, including any outpatient facility or
18 clinic of a hospital;

19 (3) a hospice established under 40 T.A.C. Section
20 97.403 or defined by 42 C.F.R. Section 418.3;

21 (4) a facility maintained or operated by this state;

22 (5) a clinic maintained or operated by the United
23 States;

24 (6) a health organization certified by the board under

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1 Section 162.001;

2 (7) a clinic owned or operated by a physician who
3 treats patients within the physician's area of specialty and who
4 uses other forms of treatment, including surgery, with the issuance
5 of a prescription for a majority of the patients; or

6 (8) a clinic owned or operated by an advanced practice
7 nurse licensed in this state who treats patients in the nurse's area
8 of specialty and uses other forms of treatment with the issuance of
9 a prescription for a majority of the patients.

10 [Sections 167.003-167.050 reserved for expansion]

11 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

12 Sec. 167.051. ADOPTION OF RULES. The board shall adopt
13 rules necessary to implement this chapter, including rules to
14 address, for a pain management clinic:

15 (1) the operation of the clinic;

16 (2) personnel requirements for the clinic, including
17 requirements for a physician who practices at a clinic;

18 (3) standards to ensure quality of patient care;

19 (4) certificate application and renewal procedures
20 and requirements;

21 (5) inspections and complaint investigations; and

22 (6) patient billing procedures.

23 Sec. 167.052. INSPECTIONS. The board may inspect a pain
24 management clinic, including the documents of a physician
25 practicing at the clinic, as necessary to ensure compliance with
26 this chapter.

27 Sec. 167.053. COMPLAINTS. The board shall investigate a

1 complaint alleging a violation of this chapter or a rule adopted
2 under this chapter by a pain management clinic certified under this
3 chapter or a physician who owns or operates a clinic in the same
4 manner as other complaints under this subtitle.

5 [Sections 167.054-167.100 reserved for expansion]

6 SUBCHAPTER C. CERTIFICATION OF CLINIC

7 Sec. 167.101. CERTIFICATE REQUIRED. (a) A pain management
8 clinic may not operate in this state unless the clinic is certified
9 under this chapter.

10 (b) A certificate issued under this chapter is not
11 transferable or assignable.

12 Sec. 167.102. CERTIFICATE APPLICATION AND ISSUANCE. (a) A
13 physician who owns or operates a pain management clinic shall apply
14 for a certificate for the clinic under this chapter. A pain
15 management clinic must be owned and operated by a medical director
16 who is a physician who practices in this state under an unrestricted
17 license.

18 (b) An applicant for a certificate under this chapter must
19 submit an application to the board on a form prescribed by the
20 board.

21 (c) The board shall issue a certificate if the board finds
22 that the pain management clinic meets the requirements of this
23 chapter and the standards adopted by the board under this chapter.

24 [Sections 167.103-167.150 reserved for expansion]

25 SUBCHAPTER D. CERTIFICATE RENEWAL

26 Sec. 167.151. EXPIRATION OF CERTIFICATE. (a) A
27 certificate issued under this chapter expires on the second

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1 anniversary of the date it is issued.

2 (b) The board shall grant a 180-day grace period from the
3 expiration date of a certificate to renew the certificate.

4 (c) The owner or operator of a pain management clinic for
5 which a certificate has expired may not continue to operate the
6 clinic until the clinic's certificate is renewed.

7 Sec. 167.152. REQUIREMENTS FOR RENEWAL. (a) The owner or
8 operator of a pain management clinic may apply to renew a
9 certificate issued to the clinic under this chapter by:

10 (1) submitting a renewal application to the board on
11 the form prescribed by the board before the expiration of the grace
12 period under Section 167.151; and

13 (2) complying with any other requirements adopted by
14 board rule.

15 (b) If a certificate is not renewed before the expiration of
16 the grace period under Section 167.151, the pain management clinic
17 must reapply for an original certificate to operate the clinic.

18 [Sections 167.153-167.200 reserved for expansion]

19 SUBCHAPTER E. REGULATION OF CLINICS; ENFORCEMENT

20 Sec. 167.201. REGULATION OF PERSON AFFILIATED WITH CLINIC.

21 (a) The owner or operator of a pain management clinic, an employee
22 of the clinic, or a person with whom a clinic contracts for services
23 may not:

24 (1) have been denied, by any jurisdiction, a license
25 under which the person may prescribe, dispense, administer, supply,
26 or sell a controlled substance;

27 (2) have held a license issued by any jurisdiction,

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1 under which the person may prescribe, dispense, administer, supply,
2 or sell a controlled substance, that has been restricted; or

3 (3) have been subject to disciplinary action by any
4 licensing entity for conduct that was a result of inappropriately
5 prescribing, dispensing, administering, supplying, or selling a
6 controlled substance.

7 (b) A pain management clinic may not be owned wholly or
8 partly by a person who has been convicted of, pled nolo contendere
9 to, or received deferred adjudication for:

10 (1) an offense that constitutes a felony; or

11 (2) an offense that constitutes a misdemeanor, the
12 facts of which relate to the distribution of illegal prescription
13 drugs or a controlled substance as defined by Section 551.003(11).

14 (c) The owner or operator of a pain management clinic shall:

15 (1) be on-site at the clinic at least 33 percent of the
16 clinic's total number of operating hours; and

17 (2) review at least 33 percent of the total number of
18 patient files of the clinic, including the patient files of a clinic
19 employee or contractor to whom authority for patient care has been
20 delegated by the clinic.

21 Sec. 167.202. DISCIPLINARY ACTION. (a) A violation of
22 this chapter or a rule adopted under this chapter is grounds for
23 disciplinary action against a pain management clinic certified
24 under this chapter or an owner or operator of a clinic certified
25 under this chapter.

26 (b) A violation of this chapter may be enforced in the same
27 manner as any other violation of this subtitle.

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1 SECTION 2. (a) Not later than March 1, 2010, the Texas
2 Medical Board shall adopt the rules required by Chapter 167,
3 Occupations Code, as added by this Act.

4 (b) Notwithstanding Section 167.101, Occupations Code, as
5 added by this Act, a pain management clinic must obtain a
6 certificate required by that section not later than September 1,
7 2010.

8 SECTION 3. (a) Except as provided by Subsection (b) of
9 this section, this Act takes effect September 1, 2009.

10 (b) Section 167.101, Occupations Code, as added by this Act,
11 takes effect September 1, 2010.

S.B. No. 911

David Newkumst
President of the Senate

Jim Strawn
Speaker of the House

I hereby certify that S.B. No. 911 passed the Senate on April 16, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 29, 2009, by the following vote: Yeas 31, Nays 0.

Lacey Gaud
Secretary of the Senate

I hereby certify that S.B. No. 911 passed the House, with amendment, on May 26, 2009, by the following vote: Yeas 142, Nays 0, two present not voting.

Robert Haney
Chief Clerk of the House

Approved:

19 JUN '09
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2 PM O'CLOCK

JUN 19 2009

Colby Hunter III