

State of Wisconsin



2015 Assembly Bill 366

Date of enactment: **March 17, 2016**

Date of publication*: **March 18, 2016**

2015 WISCONSIN ACT 265

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.

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 provid-

ing 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) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (hp).

(2) "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.

(3) "Pain clinic" means any of the following:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(a) 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 or interventional pain medicine.

(b) 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.

(4) "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, as defined in s. 961.385 (1) (ag).

(5) "Pain syndrome" means any of the following:

(a) Pain that is reasonably anticipated to persist, or has persisted, beyond the time frame for normal healing.

(b) Pain that is reasonably anticipated to persist, or has persisted, for more than 3 months.

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

50.65 Pain clinics. (1) CERTIFICATION REQUIRED. (a) Except as provided under par. (g), 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. A business entity that owns more than one pain clinic may apply for a single certificate for all pain clinics it owns, but the business entity assuming responsibility for the pain clinics shall submit with the application a listing of each pain clinic site, the number of days each week each pain clinic site operates, and the health care providers who are working on each day of operation at each site. 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. The department 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.

(f) Subject to sub. (2), a certificate issued under this subsection is valid for 3 years and may be renewed.

(g) A pain clinic at which health care providers do not regularly prescribe monitored prescription drugs, as defined in s. 961.385 (1) (ag), to a patient for more than 90 days in a 12-month period is not required to obtain a certificate to operate under this subsection.

(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) **PAYMENT METHOD.** (a) In this subsection, "traceable" means capable of allowing a person to ascertain, retain, and verify personally identifiable information, including, at a minimum, the first and last name, home address, and date of birth, of a payer in connection with a payment.

(b) 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 at the pain clinic and shall retain records of payment. An individual seeking treatment for which a claim is submitted to an insurance company may pay to the pain clinic any insurance copayment, coinsurance, or deductible with cash or another payment method that is not traceable.

(4) **DIRECT DISPENSING.** A pain clinic may not directly dispense, as defined in s. 450.01 (7), a monitored prescription drug, as defined in s. 961.385 (1) (ag), that is administered orally, unless any of the following are true:

(a) The pain clinic is licensed as a pharmacy under s. 450.06.

(b) The pain clinic is treating an individual under ch. 102 for a condition or complaint reasonably related to a condition for which the individual claims worker's compensation under ch. 102.

(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, after consulting with the medical examining board, may promulgate rules to govern the operation of pain clinics as the department finds necessary to provide safety to the public. The department may promulgate other rules it determines are necessary to implement this section.

(7) **REGULATION OF PROFESSIONS.** Nothing in this section confers authority on the department of health services to regulate the profession or practice of a health care provider whose profession is regulated by the department of safety and professional services or an examining board attached to the department of safety and professional services.

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~~ VI 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.

SECTION 11. Nonstatutory provisions.

(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.