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LEGISLATIVE ACTION

Senate

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House

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Floor: 5/AD/2R

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04/28/2011 02:16 PM

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Senator Fasano moved the following:

Senate Amendment (with title amendment)

Delete lines 653 - 771

and insert:

Section 11. Paragraph (a) of subsection (1) of section 459.0081, Florida Statutes, is amended to read:

459.0081 Physician survey.-

(1) Each person who applies for licensure renewal as a physician under chapter 458 or this chapter must, in conjunction with the renewal of such license under procedures adopted by the Department of Health and in addition to any other information that may be required from the applicant, furnish the following to the Department of Health in a physician survey:



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14 (a) Licensee information, including, but not limited to:

15 1. Frequency and geographic location of practice within the
16 state.

17 2. Practice setting.

18 3. Percentage of time spent in direct patient care.

19 4. Anticipated change to license or practice status.

20 5. Areas of specialty or certification.

21 6. Whether the department has ever approved or denied the
22 physician's registration for access to a patient's information
23 in the database of the prescription drug monitoring program.

24 7. Whether the physician uses the prescription drug
25 monitoring program with patients in his or her medical practice.

26 Section 12. Subsection (3) is added to section 459.0082,
27 Florida Statutes, to read:

28 459.0082 Analysis of survey results; report.—

29 (3) By November 1 of each year, the Department of Health
30 shall provide nonidentifying information to the Implementation
31 and Oversight Task Force of the prescription drug monitoring
32 program regarding the number of physicians who are registered
33 with the prescription drug monitoring program and who also use
34 the database from the prescription drug monitoring program for
35 their patients in their medical practice.

36 Section 13. Paragraphs (f) and (g) are added to subsection
37 (1), paragraphs (e) and (f) are added to subsection (2), and
38 paragraphs (d) and (e) are added to subsection (3) of section
39 459.013, Florida Statutes, to read:

40 459.013 Penalty for violations.—

41 (1) Each of the following acts constitutes a felony of the
42 third degree, punishable as provided in s. 775.082, s. 775.083,



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43 or s. 775.084:

44 (f) Failing to perform a physical examination of a patient
45 on the same day that the osteopathic physician dispenses or
46 prescribes a controlled substance to the patient at a pain-
47 management clinic occurring three or more times within a 6-month
48 period, or failing to perform a physical examination on three or
49 more different patients on the same day that the osteopathic
50 physician dispenses or prescribes a controlled substance to each
51 patient at a pain-management clinic within a 6-month period.

52 (g) Prescribing or dispensing in excess of a 72-hour dose
53 of controlled substances at a pain-management clinic for the
54 treatment of chronic nonmalignant pain of a patient occurring
55 three or more times within a 6-month period without documenting
56 in the patient's record the reason that such dosage is within
57 the standard of care. For the purpose of this paragraph, the
58 standard of care is set forth in rule 64B15-14.005(3), Florida
59 Administrative Code.

60 (2) Each of the following acts constitutes a misdemeanor of
61 the first degree, punishable as provided in s. 775.082 or s.
62 775.083:

63 (e) Failing to perform a physical examination of a patient
64 on the same day that the osteopathic physician dispenses or
65 prescribes a controlled substance to the patient at a pain-
66 management clinic occurring two times within a 6-month period,
67 or failing to perform a physical examination on two different
68 patients on the same day that the osteopathic physician
69 dispenses or prescribes a controlled substance to each patient
70 at a pain-management clinic within a 6-month period.

71 (f) Prescribing or dispensing in excess of a 72-hour dose



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72 of controlled substances at a pain-management clinic for the
73 treatment of chronic nonmalignant pain of a patient occurring
74 two times within a 6-month period without documenting in the
75 patient's record the reason that such dosage is within the
76 standard of care. For the purpose of this paragraph, the
77 standard of care is set forth in rule 64B15-14.005(3), Florida
78 Administrative Code.

79 (3) Each of the following constitutes a misdemeanor of the
80 second degree, punishable as provided in s. 775.082 or s.
81 775.083:

82 (d) A first offense of failing to perform a physical
83 examination of a patient on the same day that the osteopathic
84 physician dispenses or prescribes a controlled substance to the
85 patient at a pain-management clinic.

86 (e) A first offense of failing to document in a patient's
87 record the reason that such dosage is within the standard of
88 care for prescribing or dispensing in excess of a 72-hour dose
89 of controlled substances at a pain-management clinic for the
90 treatment of chronic nonmalignant pain. For the purpose of this
91 paragraph, the standard of care is set forth in rule 64B15-
92 14.005(3), Florida Administrative Code.

93 Section 14. Paragraph (a) of subsection (1) and paragraphs
94 (a) and (c) of subsection (2) of section 459.0137, Florida
95 Statutes, are amended, and paragraphs (f) and (g) are added to
96 subsection (5) of that section, to read:

97 459.0137 Pain-management clinics.—

98 (1) REGISTRATION.—

99 (a) All privately owned pain-management clinics,
100 facilities, or offices, hereinafter referred to as "clinics,"



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101 which advertise in any medium for any type of pain-management
102 services, or employ an osteopathic physician who is primarily
103 engaged in the treatment of pain by prescribing or dispensing
104 controlled substance medications, must register with the
105 department unless:

106 1. That clinic is licensed as a facility pursuant to
107 chapter 395;

108 2. The majority of the physicians who provide services in
109 the clinic primarily provide surgical services or interventional
110 pain procedures of the type routinely billed using surgical
111 codes;

112 3. The clinic is owned by a publicly held corporation whose
113 shares are traded on a national exchange or on the over-the-
114 counter market and whose total assets at the end of the
115 corporation's most recent fiscal quarter exceeded \$50 million;

116 4. The clinic is affiliated with an accredited medical
117 school at which training is provided for medical students,
118 residents, or fellows;

119 5. The clinic does not prescribe or dispense controlled
120 substances for the treatment of pain; or

121 6. The clinic is owned by a corporate entity exempt from
122 federal taxation under 26 U.S.C. s. 501(c)(3).

123 (2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
124 apply to any osteopathic physician who provides professional
125 services in a pain-management clinic that is required to be
126 registered in subsection (1).

127 (a) An osteopathic physician may not practice medicine in a
128 pain-management clinic, as described in subsection (4), if+

129 ~~1.~~ The pain-management clinic is not registered with the



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130 department as required by this section. ~~;~~ or

131 ~~2. Effective July 1, 2012, the physician has not~~
132 ~~successfully completed a pain medicine fellowship that is~~
133 ~~accredited by the Accreditation Council for Graduate Medical~~
134 ~~Education or the American Osteopathic Association or a pain-~~
135 ~~medicine residency that is accredited by the Accreditation~~
136 ~~Council for Graduate Medical Education or the American~~
137 ~~Osteopathic Association or, prior to July 1, 2012, does not~~
138 ~~comply with rules adopted by the board.~~

139

140 Any physician who qualifies to practice medicine in a pain-
141 management clinic pursuant to rules adopted by the Board of
142 Osteopathic Medicine as of July 1, 2012, may continue to
143 practice medicine in a pain-management clinic as long as the
144 physician continues to meet the qualifications set forth in the
145 board rules. An osteopathic physician who violates this
146 paragraph is subject to disciplinary action by his or her
147 appropriate medical regulatory board.

148 (c) An osteopathic physician, an advanced registered nurse
149 practitioner, or a physician assistant must perform an
150 appropriate medical ~~a physical~~ examination of a patient on the
151 same day that the physician ~~he or she~~ dispenses or prescribes a
152 controlled substance to a patient at a pain-management clinic.
153 If the osteopathic physician prescribes or dispenses more than a
154 72-hour dose of controlled substances for the treatment of
155 chronic nonmalignant pain, the osteopathic physician must
156 document in the patient's record the reason for which
157 prescribing or dispensing a dosage in excess of a 72-hour dose
158 of controlled substances for the treatment of chronic



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159 nonmalignant pain is within the standard of care for prescribing
160 or dispensing that quantity.

161 (5) PENALTIES; ENFORCEMENT.—

162 (f) A licensee or other person who serves as the designated
163 physician of a pain-management clinic as defined in s. 458.3265
164 or s. 459.0137 and registers a pain-management clinic through
165 intentional misrepresentation or fraud or procures or attempts
166 to procure the registration of a pain-management clinic for any
167 other person by making or causing to be made any false or
168 fraudulent representation commits a felony of the third degree,
169 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

170 (g) Any person who registers a pain-management clinic
171 through misrepresentation or fraud or who procures or attempts
172 to procure the registration of a pain-management clinic for any
173 other person by making or causing to be made any false or
174 fraudulent representation, commits a felony of the third degree,
175 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

176
177 ===== T I T L E A M E N D M E N T =====

178 And the title is amended as follows:

179 Delete lines 62 - 71

180 and insert:

181 this state; amending s. 459.0081, F.S.; revising the
182 information that must be furnished in a physician
183 survey to the Department of Health in order to renew a
184 license to practice osteopathic medicine; amending s.
185 459.0082, F.S.; requiring the department to provide
186 certain nonidentifying information to the
187 Implementation and Oversight Task Force of the



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188 prescription drug monitoring program; amending s.
189 459.013, F.S.; providing additional penalties;
190 amending s. 459.0137, F.S.; providing an exemption
191 from the requirement that all privately owned pain-
192 management clinics, facilities, or offices that
193 advertise in any medium for any type of pain-
194 management services, or employ an osteopathic
195 physician who is primarily engaged in the treatment of
196 pain by prescribing or dispensing controlled substance
197 medications, must register with the Department of
198 Health; revising the responsibilities of an
199 osteopathic physician who provides professional
200 services in a pain-management clinic; requiring an
201 osteopathic physician, an advanced registered