

By the Committees on Community Affairs; and Health Policy; and  
Senator Grimsley

578-04007A-13

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1                                   A bill to be entitled  
2           An act relating to the provision of health care with  
3           controlled substances; amending s. 456.44, F.S.;  
4           limiting the application of requirements for  
5           prescribing controlled substances; requiring a  
6           physician to consult the prescription drug monitoring  
7           program database before prescribing certain controlled  
8           substances; authorizing the appropriate board to adopt  
9           a penalty for failure to consult the database;  
10          exempting nursing home residents and certain  
11          physicians from requirements regarding prescriptions  
12          of controlled substances; amending s. 465.003, F.S.;  
13          defining a term; conforming a cross-reference;  
14          creating s. 465.0065, F.S.; providing notice  
15          requirements for inspection of a pharmacy; amending s.  
16          465.016, F.S.; providing additional grounds for  
17          disciplinary action; conforming a cross-reference;  
18          amending s. 465.022, F.S.; conforming a cross-  
19          reference; requiring a pharmacy permittee to commence  
20          operations within 180 days after permit issuance or  
21          show good cause why operations were not commenced;  
22          requiring the Board of Pharmacy to establish rules;  
23          requiring a pharmacy permittee to be supervised by a  
24          prescription department manager or consultant  
25          pharmacist of record; amending s. 465.023, F.S.;  
26          providing additional grounds for disciplinary action;  
27          conforming a cross-reference; creating s. 465.1902,  
28          F.S.; providing that regulation of the licensure,  
29          activity, and operation of pharmacies and pharmacists

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30 is preempted to the state; prohibiting a local  
31 government or political subdivision of the state from  
32 enacting or enforcing an ordinance that imposes a  
33 levy, charge, or fee upon, or that otherwise  
34 regulates, pharmacies and pharmacists, except for  
35 ordinances regarding local business taxes and land  
36 development; amending s. 893.055, F.S.; deleting an  
37 obsolete provision; deleting a provision that  
38 prohibits funds from prescription drug manufacturers  
39 to be used to implement the prescription drug  
40 monitoring program; authorizing the prescription drug  
41 monitoring program to be funded by state funds;  
42 revising the sources of money which are inappropriate  
43 for the direct-support organization of the  
44 prescription drug monitoring program to receive;  
45 creating s. 893.0552, F.S.; providing that regulation  
46 of the licensure, activity, and operation of pain-  
47 management clinics is preempted to the state under  
48 certain circumstances; authorizing a local government  
49 or political subdivision of the state to enact certain  
50 ordinances regarding local business taxes and land  
51 development; amending ss. 409.9201, 458.331, 459.015,  
52 465.014, 465.015, 465.0156, 465.0197, 465.1901,  
53 499.003, and 893.02, F.S.; conforming cross-  
54 references; providing an effective date.

55  
56 Be It Enacted by the Legislature of the State of Florida:

57  
58 Section 1. Subsections (2) and (3) of section 456.44,

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59 Florida Statutes, are amended to read:

60 456.44 Controlled substance prescribing.—

61 (2) REGISTRATION.—~~Effective January 1, 2012,~~ A physician  
62 licensed under chapter 458, chapter 459, chapter 461, or chapter  
63 466 who prescribes more than a 30-day supply of any controlled  
64 substance, listed in Schedule II, Schedule III, or Schedule IV  
65 as defined in s. 893.03, over a 6-month period to any one  
66 patient for the treatment of chronic nonmalignant pain, must:

67 (a) Designate himself or herself as a controlled substance  
68 prescribing practitioner on the physician's practitioner  
69 profile.

70 (b) Comply with the requirements of this section and  
71 applicable board rules.

72 (3) STANDARDS OF PRACTICE.—The standards of practice in  
73 this section do not supersede the level of care, skill, and  
74 treatment recognized in general law related to health care  
75 licensure.

76 (a) A complete medical history and a physical examination  
77 must be conducted before beginning any treatment and must be  
78 documented in the medical record. The exact components of the  
79 physical examination shall be left to the judgment of the  
80 clinician who is expected to perform a physical examination  
81 proportionate to the diagnosis that justifies a treatment. The  
82 medical record must, at a minimum, document the nature and  
83 intensity of the pain, current and past treatments for pain,  
84 underlying or coexisting diseases or conditions, the effect of  
85 the pain on physical and psychological function, a review of  
86 previous medical records, previous diagnostic studies, and  
87 history of alcohol and substance abuse. The medical record shall

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88 also document the presence of one or more recognized medical  
89 indications for the use of a controlled substance. Each  
90 registrant must develop a written plan for assessing each  
91 patient's risk of aberrant drug-related behavior, which may  
92 include patient drug testing. Registrants must assess each  
93 patient's risk for aberrant drug-related behavior and monitor  
94 that risk on an ongoing basis in accordance with the plan.

95 (b) Before or during a new patient's visit for pain-  
96 treatment services at a pain-management clinic registered under  
97 s. 458.3265 or s. 459.0137, a physician shall consult the  
98 prescription drug monitoring program database provided under s.  
99 893.055(2) (a) before prescribing a controlled substance listed  
100 in Schedule II or Schedule III in s. 893.03. The physician may  
101 designate an agent under his or her supervision to consult the  
102 database. The board shall adopt rules to establish a penalty for  
103 a physician who does not comply with this subsection.

104 (c) ~~(b)~~ Each registrant must develop a written  
105 individualized treatment plan for each patient. The treatment  
106 plan shall state objectives that will be used to determine  
107 treatment success, such as pain relief and improved physical and  
108 psychosocial function, and shall indicate if any further  
109 diagnostic evaluations or other treatments are planned. After  
110 treatment begins, the physician shall adjust drug therapy to the  
111 individual medical needs of each patient. Other treatment  
112 modalities, including a rehabilitation program, shall be  
113 considered depending on the etiology of the pain and the extent  
114 to which the pain is associated with physical and psychosocial  
115 impairment. The interdisciplinary nature of the treatment plan  
116 shall be documented.

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117        (d)~~(e)~~ The physician shall discuss the risks and benefits  
118 of the use of controlled substances, including the risks of  
119 abuse and addiction, as well as physical dependence and its  
120 consequences, with the patient, persons designated by the  
121 patient, or the patient's surrogate or guardian if the patient  
122 is incompetent. The physician shall use a written controlled  
123 substance agreement between the physician and the patient  
124 outlining the patient's responsibilities, including, but not  
125 limited to:

126            1. Number and frequency of controlled substance  
127 prescriptions and refills.

128            2. Patient compliance and reasons for which drug therapy  
129 may be discontinued, such as a violation of the agreement.

130            3. An agreement that controlled substances for the  
131 treatment of chronic nonmalignant pain shall be prescribed by a  
132 single treating physician unless otherwise authorized by the  
133 treating physician and documented in the medical record.

134        (e)~~(d)~~ The patient shall be seen by the physician at  
135 regular intervals, not to exceed 3 months, to assess the  
136 efficacy of treatment, ensure that controlled substance therapy  
137 remains indicated, evaluate the patient's progress toward  
138 treatment objectives, consider adverse drug effects, and review  
139 the etiology of the pain. Continuation or modification of  
140 therapy shall depend on the physician's evaluation of the  
141 patient's progress. If treatment goals are not being achieved,  
142 despite medication adjustments, the physician shall reevaluate  
143 the appropriateness of continued treatment. The physician shall  
144 monitor patient compliance in medication usage, related  
145 treatment plans, controlled substance agreements, and

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146 indications of substance abuse or diversion at a minimum of 3-  
147 month intervals.

148 (f)~~(e)~~ The physician shall refer the patient as necessary  
149 for additional evaluation and treatment in order to achieve  
150 treatment objectives. Special attention shall be given to those  
151 patients who are at risk for misusing their medications and  
152 those whose living arrangements pose a risk for medication  
153 misuse or diversion. The management of pain in patients with a  
154 history of substance abuse or with a comorbid psychiatric  
155 disorder requires extra care, monitoring, and documentation and  
156 requires consultation with or referral to an addiction medicine  
157 specialist or psychiatrist.

158 (g)~~(f)~~ A physician registered under this section must  
159 maintain accurate, current, and complete records that are  
160 accessible and readily available for review and comply with the  
161 requirements of this section, the applicable practice act, and  
162 applicable board rules. The medical records must include, but  
163 are not limited to:

- 164 1. The complete medical history and a physical examination,  
165 including history of drug abuse or dependence.
- 166 2. Diagnostic, therapeutic, and laboratory results.
- 167 3. Evaluations and consultations.
- 168 4. Treatment objectives.
- 169 5. Discussion of risks and benefits.
- 170 6. Treatments.
- 171 7. Medications, including date, type, dosage, and quantity  
172 prescribed.
- 173 8. Instructions and agreements.
- 174 9. Periodic reviews.

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175 10. Results of any drug testing.

176 11. A photocopy of the patient's government-issued photo  
177 identification.

178 12. If a written prescription for a controlled substance is  
179 given to the patient, a duplicate of the prescription.

180 13. The physician's full name presented in a legible  
181 manner.

182 (h) ~~(g)~~ Patients with signs or symptoms of substance abuse  
183 shall be immediately referred to a board-certified pain  
184 management physician, an addiction medicine specialist, or a  
185 mental health addiction facility as it pertains to drug abuse or  
186 addiction unless the physician is board-certified or board-  
187 eligible in pain management. Throughout the period of time  
188 before receiving the consultant's report, a prescribing  
189 physician shall clearly and completely document medical  
190 justification for continued treatment with controlled substances  
191 and those steps taken to ensure medically appropriate use of  
192 controlled substances by the patient. Upon receipt of the  
193 consultant's written report, the prescribing physician shall  
194 incorporate the consultant's recommendations for continuing,  
195 modifying, or discontinuing controlled substance therapy. The  
196 resulting changes in treatment shall be specifically documented  
197 in the patient's medical record. Evidence or behavioral  
198 indications of diversion shall be followed by discontinuation of  
199 controlled substance therapy, and the patient shall be  
200 discharged, and all results of testing and actions taken by the  
201 physician shall be documented in the patient's medical record.

202

203 This subsection does not apply to a board-eligible or board-

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204 certified anesthesiologist, physiatrist, rheumatologist, or  
205 neurologist, or to a board-certified physician who has surgical  
206 privileges at a hospital or ambulatory surgery center and  
207 primarily provides surgical services. This subsection does not  
208 apply to a board-eligible or board-certified medical specialist  
209 who has also completed a fellowship in pain medicine approved by  
210 the Accreditation Council for Graduate Medical Education or the  
211 American Osteopathic Association, or who is board eligible or  
212 board certified in pain medicine by the American Board of Pain  
213 Medicine or a board approved by the American Board of Medical  
214 Specialties or the American Osteopathic Association and performs  
215 interventional pain procedures of the type routinely billed  
216 using surgical codes. This subsection does not apply to a  
217 physician who prescribes medically necessary controlled  
218 substances for a patient during an inpatient stay in a hospital  
219 licensed under chapter 395 or to a resident in a facility  
220 licensed under part II of chapter 400. This subsection does not  
221 apply to any physician licensed under chapter 458 or chapter 459  
222 who writes fewer than 50 prescriptions for a controlled  
223 substance for all of his or her patients during a 1-year period.

224 Section 2. Present subsections (1) through (17) of section  
225 465.003, Florida Statutes, are renumbered as subsections (2)  
226 through (18), respectively, paragraph (a) of present subsection  
227 (11) of that section is amended, and a new subsection (1) is  
228 added to that section, to read:

229 465.003 Definitions.—As used in this chapter, the term:

230 (1) "Abandoned" means the status of a pharmacy permit of a  
231 person or entity that was issued the permit but fails to  
232 commence pharmacy operations within 180 days after issuance of

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233 the permit without good cause or fails to follow pharmacy  
234 closure requirements as set by the board.

235 (12)~~(11)~~(a) "Pharmacy" includes a community pharmacy, an  
236 institutional pharmacy, a nuclear pharmacy, a special pharmacy,  
237 and an Internet pharmacy.

238 1. The term "community pharmacy" includes every location  
239 where medicinal drugs are compounded, dispensed, stored, or sold  
240 or where prescriptions are filled or dispensed on an outpatient  
241 basis.

242 2. The term "institutional pharmacy" includes every  
243 location in a hospital, clinic, nursing home, dispensary,  
244 sanitarium, extended care facility, or other facility,  
245 hereinafter referred to as "health care institutions," where  
246 medicinal drugs are compounded, dispensed, stored, or sold.

247 3. The term "nuclear pharmacy" includes every location  
248 where radioactive drugs and chemicals within the classification  
249 of medicinal drugs are compounded, dispensed, stored, or sold.  
250 The term "nuclear pharmacy" does not include hospitals licensed  
251 under chapter 395 or the nuclear medicine facilities of such  
252 hospitals.

253 4. The term "special pharmacy" includes every location  
254 where medicinal drugs are compounded, dispensed, stored, or sold  
255 if such locations are not otherwise defined in this subsection.

256 5. The term "Internet pharmacy" includes locations not  
257 otherwise licensed or issued a permit under this chapter, within  
258 or outside this state, which use the Internet to communicate  
259 with or obtain information from consumers in this state and use  
260 such communication or information to fill or refill  
261 prescriptions or to dispense, distribute, or otherwise engage in

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262 the practice of pharmacy in this state. Any act described in  
263 this definition constitutes the practice of pharmacy as defined  
264 in subsection (14) ~~(13)~~.

265 Section 3. Section 465.0065, Florida Statutes, is created  
266 to read:

267 465.0065 Notices; form and service.—Each notice served by  
268 the department pursuant to this chapter must be in writing and  
269 must be delivered personally by an agent of the department or by  
270 certified mail to the pharmacy permittee or licensee. If the  
271 pharmacy permittee or licensee refuses to accept service or  
272 evades service or if the agent is otherwise unable to carry out  
273 service after due diligence, the department may post the notice  
274 in a conspicuous place at the pharmacy or at the home or  
275 business address for the licensee.

276 Section 4. Paragraphs (e) and (s) of subsection (1) of  
277 section 465.016, Florida Statutes, are amended, and paragraph  
278 (u) is added to that subsection, to read:

279 465.016 Disciplinary actions.—

280 (1) The following acts constitute grounds for denial of a  
281 license or disciplinary action, as specified in s. 456.072(2):

282 (e) Violating chapter 499; 21 U.S.C. ss. 301-392, known as  
283 the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et  
284 seq., known as the Comprehensive Drug Abuse Prevention and  
285 Control Act; or chapter 893 or rules adopted thereunder.

286 (s) Dispensing any medicinal drug based upon a  
287 communication that purports to be a prescription as defined by  
288 s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows  
289 or has reason to believe that the purported prescription is not  
290 based upon a valid practitioner-patient relationship.

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291       (u) Misappropriating drugs, supplies, or equipment from a  
292 pharmacy permittee.

293       Section 5. Paragraph (j) of subsection (5) of section  
294 465.022, Florida Statutes, is amended, present subsections (10)  
295 through (14) are renumbered as subsections (11) through (15),  
296 respectively, present subsection (10) of that section is  
297 amended, and a new subsection (10) is added to that section, to  
298 read:

299       465.022 Pharmacies; general requirements; fees.—

300       (5) The department or board shall deny an application for a  
301 pharmacy permit if the applicant or an affiliated person,  
302 partner, officer, director, or prescription department manager  
303 or consultant pharmacist of record of the applicant:

304       (j) Has dispensed any medicinal drug based upon a  
305 communication that purports to be a prescription as defined by  
306 s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows  
307 or has reason to believe that the purported prescription is not  
308 based upon a valid practitioner-patient relationship that  
309 includes a documented patient evaluation, including history and  
310 a physical examination adequate to establish the diagnosis for  
311 which any drug is prescribed and any other requirement  
312 established by board rule under chapter 458, chapter 459,  
313 chapter 461, chapter 463, chapter 464, or chapter 466.

314  
315 For felonies in which the defendant entered a plea of guilty or  
316 nolo contendere in an agreement with the court to enter a  
317 pretrial intervention or drug diversion program, the department  
318 shall deny the application if upon final resolution of the case  
319 the licensee has failed to successfully complete the program.

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320       (10) The permittee shall commence pharmacy operations  
321 within 180 days after issuance of the permit, or show good cause  
322 to the department why pharmacy operations were not commenced.  
323 Commencement of pharmacy operations includes, but is not limited  
324 to, acts within the scope of the practice of pharmacy, ordering  
325 or receiving drugs, and other similar activities. The board  
326 shall establish rules regarding commencement of pharmacy  
327 operations.

328       (11)~~(10)~~ A pharmacy permittee shall be supervised by a  
329 prescription department manager or consultant pharmacist of  
330 record at all times. A permittee must notify the department, on  
331 a form approved by the board, within 10 days after any change in  
332 prescription department manager or consultant pharmacist of  
333 record.

334       Section 6. Subsection (1) of section 465.023, Florida  
335 Statutes, is amended to read:

336       465.023 Pharmacy permittee; disciplinary action.—

337       (1) The department or the board may revoke or suspend the  
338 permit of any pharmacy permittee, and may fine, place on  
339 probation, or otherwise discipline any pharmacy permittee if the  
340 permittee, or any affiliated person, partner, officer, director,  
341 or agent of the permittee, including a person fingerprinted  
342 under s. 465.022(3), has:

343       (a) Obtained a permit by misrepresentation or fraud or  
344 through an error of the department or the board;

345       (b) Attempted to procure, or has procured, a permit for any  
346 other person by making, or causing to be made, any false  
347 representation;

348       (c) Violated any of the requirements of this chapter or any

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349 of the rules of the Board of Pharmacy; of chapter 499, known as  
350 the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-392,  
351 known as the "Federal Food, Drug, and Cosmetic Act"; of 21  
352 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse  
353 Prevention and Control Act; or of chapter 893 or rules adopted  
354 thereunder;

355 (d) Been convicted or found guilty, regardless of  
356 adjudication, of a felony or any other crime involving moral  
357 turpitude in any of the courts of this state, of any other  
358 state, or of the United States;

359 (e) Been convicted or disciplined by a regulatory agency of  
360 the Federal Government or a regulatory agency of another state  
361 for any offense that would constitute a violation of this  
362 chapter;

363 (f) Been convicted of, or entered a plea of guilty or nolo  
364 contendere to, regardless of adjudication, a crime in any  
365 jurisdiction which relates to the practice of, or the ability to  
366 practice, the profession of pharmacy;

367 (g) Been convicted of, or entered a plea of guilty or nolo  
368 contendere to, regardless of adjudication, a crime in any  
369 jurisdiction which relates to health care fraud; or

370 (h) Dispensed any medicinal drug based upon a communication  
371 that purports to be a prescription as defined by s. 465.003 ~~s.~~  
372 ~~465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason  
373 to believe that the purported prescription is not based upon a  
374 valid practitioner-patient relationship that includes a  
375 documented patient evaluation, including history and a physical  
376 examination adequate to establish the diagnosis for which any  
377 drug is prescribed and any other requirement established by

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378 board rule under chapter 458, chapter 459, chapter 461, chapter  
379 463, chapter 464, or chapter 466.

380 Section 7. Section 465.1902, Florida Statutes, is created  
381 to read:

382 465.1902 Preemption.—This chapter preempts to the state all  
383 regulation of the licensure, activity, and operation of  
384 pharmacies and pharmacists as defined in this chapter. A local  
385 government or political subdivision of the state may not enact  
386 or enforce an ordinance that imposes a levy, charge, or fee  
387 upon, or that otherwise regulates, pharmacies and pharmacists as  
388 defined in this chapter, except that this preemption does not  
389 prohibit a local government or political subdivision from  
390 enacting an ordinance regarding the following:

391 (1) Local business taxes adopted pursuant to chapter 205.

392 (2) Land use development regulations adopted pursuant to  
393 chapter 163, which include regulation of any aspect of  
394 development, including a subdivision, building construction,  
395 sign regulation, and any other regulation concerning the  
396 development of land, landscaping, or tree protection, and which  
397 do not include restrictions on pain-management services, health  
398 care services, or the prescribing of controlled substances.

399 Section 8. Paragraph (b) of subsection (2), subsection  
400 (10), and paragraph (c) of subsection (11) of section 893.055,  
401 Florida Statutes, are amended to read:

402 893.055 Prescription drug monitoring program.—

403 (2)

404 (b) The department, ~~when the direct support organization~~  
405 ~~receives at least \$20,000 in nonstate moneys or the state~~  
406 ~~receives at least \$20,000 in federal grants for the prescription~~

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407 ~~drug monitoring program,~~ shall adopt rules as necessary  
408 concerning the reporting, accessing the database, evaluation,  
409 management, development, implementation, operation, security,  
410 and storage of information within the system, including rules  
411 for when patient advisory reports are provided to pharmacies and  
412 prescribers. The patient advisory report shall be provided in  
413 accordance with s. 893.13(7)(a)8. The department shall work with  
414 the professional health care licensure boards, such as the Board  
415 of Medicine, the Board of Osteopathic Medicine, and the Board of  
416 Pharmacy; other appropriate organizations, such as the Florida  
417 Pharmacy Association, the Florida Medical Association, the  
418 Florida Retail Federation, and the Florida Osteopathic Medical  
419 Association, including those relating to pain management; and  
420 the Attorney General, the Department of Law Enforcement, and the  
421 Agency for Health Care Administration to develop rules  
422 appropriate for the prescription drug monitoring program.

423 (10) All costs incurred by the department in administering  
424 the prescription drug monitoring program shall be funded through  
425 state funds, federal grants, or private funding applied for or  
426 received by the state. The department may not commit funds for  
427 the monitoring program without ensuring funding is available.  
428 ~~The prescription drug monitoring program and the implementation~~  
429 ~~thereof are contingent upon receipt of the nonstate funding.~~ The  
430 department and state government shall cooperate with the direct-  
431 support organization established pursuant to subsection (11) in  
432 seeking state funds, federal grant funds, other nonstate grant  
433 funds, gifts, donations, or other private moneys for the  
434 department if so long as the costs of doing so are not  
435 considered material. Nonmaterial costs for this purpose include,

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436 but are not limited to, the costs of mailing and personnel  
437 assigned to research or apply for a grant. Notwithstanding the  
438 exemptions to competitive-solicitation requirements under s.  
439 287.057(3)(f), the department shall comply with the competitive-  
440 solicitation requirements under s. 287.057 for the procurement  
441 of any goods or services required by this section. ~~Funds~~  
442 ~~provided, directly or indirectly, by prescription drug~~  
443 ~~manufacturers may not be used to implement the program.~~

444 (11) The department may establish a direct-support  
445 organization that has a board consisting of at least five  
446 members to provide assistance, funding, and promotional support  
447 for the activities authorized for the prescription drug  
448 monitoring program.

449 (c) The State Surgeon General shall appoint a board of  
450 directors for the direct-support organization. Members of the  
451 board shall serve at the pleasure of the State Surgeon General.  
452 The State Surgeon General shall provide guidance to members of  
453 the board to ensure that moneys received by the direct-support  
454 organization are not received from inappropriate sources.  
455 Inappropriate sources include, but are not limited to, donors,  
456 grantors, persons, ~~or~~ organizations, or pharmaceutical  
457 companies, that may monetarily or substantively benefit from the  
458 purchase of goods or services by the department in furtherance  
459 of the prescription drug monitoring program.

460 Section 9. Section 893.0552, Florida Statutes, is created  
461 to read:

462 893.0552 Preemption of regulation.—

463 (1) This section preempts to the state all regulation of  
464 the licensure, activity, and operation of pain-management

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465 clinics as defined in ss. 458.3265 and 459.0137 in the following  
466 circumstances:

467 (a) The clinic is wholly owned and operated by a physician  
468 who performs interventional pain procedures of the type  
469 routinely billed using surgical codes, who has never been  
470 suspended or revoked for prescribing a controlled substance in  
471 Schedule II or Schedule III of s. 893.03 and drugs containing  
472 Alprazolam in excessive or inappropriate quantities that are not  
473 in the best interest of a patient, and who:

474 1. Has completed a fellowship in pain medicine which is  
475 approved by the Accreditation Council for Graduate Medical  
476 Education or the American Osteopathic Association;

477 2. Is board-certified in pain medicine by the American  
478 Board of Pain Medicine, board-certified by the American Board of  
479 Interventional Pain Physicians; or

480 3. Has a board certification or subcertification in pain  
481 management or pain medicine by a specialty board approved by the  
482 American Board of Medical Specialties or the American  
483 Osteopathic Association.

484 (b) The clinic is wholly owned and operated by a physician-  
485 multispecialty practice if one or more board-eligible or board-  
486 certified medical specialists has one of the qualifications  
487 specified in subparagraph (a)1., subparagraph (a)2., or  
488 subparagraph (a)3., performs interventional pain procedures of  
489 the type routinely billed using surgical codes, and has never  
490 been suspended or revoked for prescribing a controlled substance  
491 in Schedule II or Schedule III of s. 893.03 and drugs containing  
492 Alprazolam in excessive or inappropriate quantities that are not  
493 in the best interest of a patient.

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494       (2) Notwithstanding subsection (1), the preemption does not  
495 prohibit a local government or political subdivision from  
496 enacting an ordinance regarding local business taxes adopted  
497 pursuant to chapter 205 and land use development regulations  
498 adopted pursuant to chapter 163. A pain-management clinic in  
499 which the regulation of its licensure, activity, and operation  
500 is preempted to the state pursuant to subsection (1) is a  
501 permissible use in a land use or zoning category that permits  
502 hospitals and other health care facilities or clinics as defined  
503 in chapter 395 or s. 408.07. Upon the request of a local  
504 government, a pain-management clinic must annually demonstrate  
505 that it qualifies for preemption pursuant to subsection (1).

506       Section 10. Subsection (1) of section 409.9201, Florida  
507 Statutes, is amended to read:

508       409.9201 Medicaid fraud.—

509       (1) As used in this section, the term:

510       (a) "Prescription drug" means any drug, including, but not  
511 limited to, finished dosage forms or active ingredients that are  
512 subject to, defined by, or described by s. 503(b) of the Federal  
513 Food, Drug, and Cosmetic Act or by s. 465.003 ~~s. 465.003(8)~~, s.  
514 499.003(46) or (53) or s. 499.007(13).

515       (b) "Value" means the amount billed to the Medicaid program  
516 for the property dispensed or the market value of a legend drug  
517 or goods or services at the time and place of the offense. If  
518 the market value cannot be determined, the term means the  
519 replacement cost of the legend drug or goods or services within  
520 a reasonable time after the offense.

521  
522 The value of individual items of the legend drugs or goods or

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523 services involved in distinct transactions committed during a  
524 single scheme or course of conduct, whether involving a single  
525 person or several persons, may be aggregated when determining  
526 the punishment for the offense.

527 Section 11. Paragraph (pp) of subsection (1) of section  
528 458.331, Florida Statutes, is amended to read:

529 458.331 Grounds for disciplinary action; action by the  
530 board and department.—

531 (1) The following acts constitute grounds for denial of a  
532 license or disciplinary action, as specified in s. 456.072(2):

533 (pp) Applicable to a licensee who serves as the designated  
534 physician of a pain-management clinic as defined in s. 458.3265  
535 or s. 459.0137:

536 1. Registering a pain-management clinic through  
537 misrepresentation or fraud;

538 2. Procuring, or attempting to procure, the registration of  
539 a pain-management clinic for any other person by making or  
540 causing to be made, any false representation;

541 3. Failing to comply with any requirement of chapter 499,  
542 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
543 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
544 the Drug Abuse Prevention and Control Act; or chapter 893, the  
545 Florida Comprehensive Drug Abuse Prevention and Control Act;

546 4. Being convicted or found guilty of, regardless of  
547 adjudication to, a felony or any other crime involving moral  
548 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
549 the courts of this state, of any other state, or of the United  
550 States;

551 5. Being convicted of, or disciplined by a regulatory

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552 agency of the Federal Government or a regulatory agency of  
553 another state for, any offense that would constitute a violation  
554 of this chapter;

555 6. Being convicted of, or entering a plea of guilty or nolo  
556 contendere to, regardless of adjudication, a crime in any  
557 jurisdiction of the courts of this state, of any other state, or  
558 of the United States which relates to the practice of, or the  
559 ability to practice, a licensed health care profession;

560 7. Being convicted of, or entering a plea of guilty or nolo  
561 contendere to, regardless of adjudication, a crime in any  
562 jurisdiction of the courts of this state, of any other state, or  
563 of the United States which relates to health care fraud;

564 8. Dispensing any medicinal drug based upon a communication  
565 that purports to be a prescription as defined in s. 465.003 ~~s.~~  
566 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or  
567 has reason to believe that the purported prescription is not  
568 based upon a valid practitioner-patient relationship; or

569 9. Failing to timely notify the board of the date of his or  
570 her termination from a pain-management clinic as required by s.  
571 458.3265(2).

572 Section 12. Paragraph (rr) of subsection (1) of section  
573 459.015, Florida Statutes, is amended to read:

574 459.015 Grounds for disciplinary action; action by the  
575 board and department.—

576 (1) The following acts constitute grounds for denial of a  
577 license or disciplinary action, as specified in s. 456.072(2):

578 (rr) Applicable to a licensee who serves as the designated  
579 physician of a pain-management clinic as defined in s. 458.3265  
580 or s. 459.0137:

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- 581           1. Registering a pain-management clinic through  
582 misrepresentation or fraud;
- 583           2. Procuring, or attempting to procure, the registration of  
584 a pain-management clinic for any other person by making or  
585 causing to be made, any false representation;
- 586           3. Failing to comply with any requirement of chapter 499,  
587 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
588 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
589 the Drug Abuse Prevention and Control Act; or chapter 893, the  
590 Florida Comprehensive Drug Abuse Prevention and Control Act;
- 591           4. Being convicted or found guilty of, regardless of  
592 adjudication to, a felony or any other crime involving moral  
593 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
594 the courts of this state, of any other state, or of the United  
595 States;
- 596           5. Being convicted of, or disciplined by a regulatory  
597 agency of the Federal Government or a regulatory agency of  
598 another state for, any offense that would constitute a violation  
599 of this chapter;
- 600           6. Being convicted of, or entering a plea of guilty or nolo  
601 contendere to, regardless of adjudication, a crime in any  
602 jurisdiction of the courts of this state, of any other state, or  
603 of the United States which relates to the practice of, or the  
604 ability to practice, a licensed health care profession;
- 605           7. Being convicted of, or entering a plea of guilty or nolo  
606 contendere to, regardless of adjudication, a crime in any  
607 jurisdiction of the courts of this state, of any other state, or  
608 of the United States which relates to health care fraud;
- 609           8. Dispensing any medicinal drug based upon a communication

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610 that purports to be a prescription as defined in s. 465.003 ~~s.~~  
611 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or  
612 has reason to believe that the purported prescription is not  
613 based upon a valid practitioner-patient relationship; or

614 9. Failing to timely notify the board of the date of his or  
615 her termination from a pain-management clinic as required by s.  
616 459.0137(2).

617 Section 13. Subsection (1) of section 465.014, Florida  
618 Statutes, is amended to read:

619 465.014 Pharmacy technician.—

620 (1) A person other than a licensed pharmacist or pharmacy  
621 intern may not engage in the practice of the profession of  
622 pharmacy, except that a licensed pharmacist may delegate to  
623 pharmacy technicians who are registered pursuant to this section  
624 those duties, tasks, and functions that do not fall within the  
625 purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts  
626 shall be performed under the direct supervision of a licensed  
627 pharmacist who shall be responsible for all such acts performed  
628 by persons under his or her supervision. A pharmacy registered  
629 technician, under the supervision of a pharmacist, may initiate  
630 or receive communications with a practitioner or his or her  
631 agent, on behalf of a patient, regarding refill authorization  
632 requests. A licensed pharmacist may not supervise more than one  
633 registered pharmacy technician unless otherwise permitted by the  
634 guidelines adopted by the board. The board shall establish  
635 guidelines to be followed by licensees or permittees in  
636 determining the circumstances under which a licensed pharmacist  
637 may supervise more than one but not more than three pharmacy  
638 technicians.

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639 Section 14. Paragraph (c) of subsection (2) of section  
640 465.015, Florida Statutes, is amended to read:

641 465.015 Violations and penalties.—

642 (2) It is unlawful for any person:

643 (c) To sell or dispense drugs as defined in s. 465.003 ~~s.~~  
644 ~~465.003(8)~~ without first being furnished with a prescription.

645 Section 15. Subsection (8) of section 465.0156, Florida  
646 Statutes, is amended to read:

647 465.0156 Registration of nonresident pharmacies.—

648 (8) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes  
649 of this section, the registered pharmacy and the pharmacist  
650 designated by the registered pharmacy as the prescription  
651 department manager or the equivalent must be licensed in the  
652 state of location in order to dispense into this state.

653 Section 16. Subsection (4) of section 465.0197, Florida  
654 Statutes, is amended to read:

655 465.0197 Internet pharmacy permits.—

656 (4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes  
657 of this section, the Internet pharmacy and the pharmacist  
658 designated by the Internet pharmacy as the prescription  
659 department manager or the equivalent must be licensed in the  
660 state of location in order to dispense into this state.

661 Section 17. Section 465.1901, Florida Statutes, is amended  
662 to read:

663 465.1901 Practice of orthotics and pedorthics.—The  
664 provisions of chapter 468 relating to orthotics or pedorthics do  
665 not apply to any licensed pharmacist or to any person acting  
666 under the supervision of a licensed pharmacist. The practice of  
667 orthotics or pedorthics by a pharmacist or any of the

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668 pharmacist's employees acting under the supervision of a  
669 pharmacist shall be construed to be within the meaning of the  
670 term "practice of the profession of pharmacy" as set forth in s.  
671 465.003 ~~s. 465.003(13)~~, and shall be subject to regulation in  
672 the same manner as any other pharmacy practice. The Board of  
673 Pharmacy shall develop rules regarding the practice of orthotics  
674 and pedorthics by a pharmacist. Any pharmacist or person under  
675 the supervision of a pharmacist engaged in the practice of  
676 orthotics or pedorthics is not precluded from continuing that  
677 practice pending adoption of these rules.

678 Section 18. Subsection (43) of section 499.003, Florida  
679 Statutes, is amended to read:

680 499.003 Definitions of terms used in this part.—As used in  
681 this part, the term:

682 (43) "Prescription drug" means a prescription, medicinal,  
683 or legend drug, including, but not limited to, finished dosage  
684 forms or active pharmaceutical ingredients subject to, defined  
685 by, or described by s. 503(b) of the Federal Food, Drug, and  
686 Cosmetic Act or s. 465.003 ~~s. 465.003(8)~~, s. 499.007(13), or  
687 subsection (11), subsection (46), or subsection (53), except  
688 that an active pharmaceutical ingredient is a prescription drug  
689 only if substantially all finished dosage forms in which it may  
690 be lawfully dispensed or administered in this state are also  
691 prescription drugs.

692 Section 19. Subsection (22) of section 893.02, Florida  
693 Statutes, is amended to read:

694 893.02 Definitions.—The following words and phrases as used  
695 in this chapter shall have the following meanings, unless the  
696 context otherwise requires:

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697 (22) "Prescription" means and includes an order for drugs  
698 or medicinal supplies written, signed, or transmitted by word of  
699 mouth, telephone, telegram, or other means of communication by a  
700 duly licensed practitioner licensed by the laws of the state to  
701 prescribe such drugs or medicinal supplies, issued in good faith  
702 and in the course of professional practice, intended to be  
703 filled, compounded, or dispensed by another person licensed by  
704 the laws of the state to do so, and meeting the requirements of  
705 s. 893.04. The term also includes an order for drugs or  
706 medicinal supplies so transmitted or written by a physician,  
707 dentist, veterinarian, or other practitioner licensed to  
708 practice in a state other than Florida, but only if the  
709 pharmacist called upon to fill such an order determines, in the  
710 exercise of his or her professional judgment, that the order was  
711 issued pursuant to a valid patient-physician relationship, that  
712 it is authentic, and that the drugs or medicinal supplies so  
713 ordered are considered necessary for the continuation of  
714 treatment of a chronic or recurrent illness. However, if the  
715 physician writing the prescription is not known to the  
716 pharmacist, the pharmacist shall obtain proof to a reasonable  
717 certainty of the validity of said prescription. A prescription  
718 order for a controlled substance shall not be issued on the same  
719 prescription blank with another prescription order for a  
720 controlled substance which is named or described in a different  
721 schedule, nor shall any prescription order for a controlled  
722 substance be issued on the same prescription blank as a  
723 prescription order for a medicinal drug, as defined in s.  
724 465.003 ~~s. 465.003(8)~~, which does not fall within the definition  
725 of a controlled substance as defined in this act.

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Section 20. This act shall take effect July 1, 2013.