



Ohio Legislative Service Commission

Final Analysis

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ACT SUMMARY

PAIN MANAGEMENT CLINICS

- Requires the State Board of Pharmacy to license pain management clinics and provides for the clinics to be licensed as terminal distributors of dangerous drugs with a pain management clinic classification.
- Requires the State Medical Board to adopt rules establishing standards for physician operation of pain management clinics and standards to be followed by physicians who provide care at the clinics.
- Authorizes the Pharmacy Board to impose a fine of up to \$5,000, and authorizes the Medical Board to impose a fine of up to \$20,000, for failure to follow the rules of operation or standards for pain management clinics.

WHOLESALE AND TERMINAL DISTRIBUTORS

- Authorizes the Pharmacy Board to suspend, without a prior hearing, the license of a wholesaler of controlled substances or terminal distributor of dangerous drugs if the Board determines there is a danger of immediate and serious harm to others.
- Provides that an application for a terminal distributor of dangerous drugs license may not be withdrawn without the approval of the Pharmacy Board.

LIMITS ON PRESCRIBER-FURNISHED CONTROLLED SUBSTANCES

- Limits the amount of controlled substances that a prescriber, other than a veterinarian, may personally furnish to a patient and provides for a \$5,000 per instance fine for surpassing those limits.

DRUG TAKE-BACK PROGRAM

- Requires the Pharmacy Board, Attorney General, and Department of Alcohol and Drug Addiction Services to develop a program under which drugs are collected from the community for destruction or disposal.

OHIO AUTOMATED Rx REPORTING SYSTEM (OARRS)

- Modifies the review, reporting, and retention of information in OARRS.
- Establishes criminal penalties for improperly disseminating, seeking to obtain, or obtaining information from OARRS.
- Prohibits a document obtained from OARRS from being used in a civil or administrative proceeding.
- Requires the applicable licensing agency to adopt rules specifying when a prescriber or pharmacist is required to review information in OARRS.

OHIO LAW ENFORCEMENT GATEWAY

- Provides access to the Ohio Law Enforcement Gateway to the Medical Board and Board of Nursing.

MEDICAL BOARD DISCIPLINARY ACTIONS

- Clarifies the Medical Board's authority to suspend without a prior hearing a person's authority to practice.
- Permits the Medical Board to take disciplinary actions based on actions of other entities regulating any health care profession or service.



- Allows the Medical Board to use a telephone conference call to ratify a consent agreement for the revocation or suspension of a license or to accept the surrender of a license.

NURSING BOARD INFORMATION

- Expands access to information collected by the Nursing Board in an investigation.

CORONER NOTIFICATIONS

- Authorizes a coroner to notify the Medical Board about a death caused by a drug overdose.

COORDINATED SERVICES PROGRAMS

- Requires each Medicaid managed care organization and the Medicaid fee-for-service system to establish a coordinated services program for Medicaid recipients who obtain prescription drugs at a frequency or in an amount that is not medically necessary.
- Requires the Bureau of Workers' Compensation to establish a coordinated services program similar to the programs to be established under Medicaid.

CHRONIC PAIN

- Replaces provisions of prior law dealing with treatment of intractable pain by physicians with provisions on treatment of chronic pain.

MEDICAL BOARD PATIENT SAFETY AND EDUCATION PROGRAMS

- Permits the Medical Board to solicit and accept grants and services to develop and maintain programs addressing patient safety and education, health care professional supply and demand, and information sharing.

COUNTY HOSPITAL PRIVATIZATION

- Provides, with regard to the requirement that a county hospital employee be compensated for unused vacation leave when separating from service, that the requirement does not apply if the employee accepts employment with a private entity acquiring the hospital's assets and the entity assumes the unused vacation leave.

TABLE OF CONTENTS

PAIN MANAGEMENT CLINICS	5
Licensing.....	5
Exemptions	6
Clinic operation	7
License issuance.....	8
Medical Board rules for clinics.....	8
Sanctions for illegal or improper clinic operation	9
Administrative fines, criminal penalties, and disciplinary actions	9
Summary suspension of clinic licenses	9
Annual report	9
WHOLESALE AND TERMINAL DISTRIBUTORS	10
Summary suspension of licenses	10
Application withdrawal.....	10
LIMITS ON PRESCRIBER-FURNISHED CONTROLLED SUBSTANCES	11
Maximum amounts in a 72-hour or 30-day period	11
Fines.....	11
DRUG TAKE-BACK PROGRAM	12
Implementation	12
Rules for operation.....	12
Data compilation	13
OHIO AUTOMATED Rx REPORTING SYSTEM (OARRS)	14
OARRS modifications	14
Wholesale distributor reports.....	14
Prescriber reports on personally furnished drugs	14
Review of information.....	15
Receipt of information	15
Retention of information	16
Criminal penalties for misuse of information	17
Information used in or excluded from legal proceedings.....	17
Restrictions on future access	18
Funding.....	18
OARRS improvements.....	18
OHIO LAW ENFORCEMENT GATEWAY	19
Access	19
MEDICAL BOARD DISCIPLINARY ACTIONS	19
Summary suspensions.....	19
Actions of other regulatory entities	19
Telephone conference calls	20
NURSING BOARD INFORMATION	20
Access to investigatory information	20

CORONER NOTIFICATIONS	21
Drug overdoses.....	21
COORDINATED SERVICES PROGRAMS	21
Medicaid	21
Bureau of Workers' Compensation.....	21
Implementation date	22
CHRONIC PAIN	22
Standards for treatment	22
MEDICAL BOARD PATIENT SAFETY AND EDUCATION PROGRAMS	23
Soliciting and accepting grants and services.....	23
COUNTY HOSPITAL PRIVATIZATION	23
Employee vacation leave	23
SUMMARY OF ADMINISTRATIVE FINES	23
Fines by the Pharmacy Board and Medical Board.....	23

CONTENT AND OPERATION

PAIN MANAGEMENT CLINICS

Licensing

Beginning June 19, 2011, which is 30 days after the act's effective date,¹ the act requires a facility operating as a pain management clinic to be licensed by the State Board of Pharmacy as a terminal distributor of dangerous drugs with a pain management clinic classification. A terminal distributor of dangerous drugs is an entity, such as a pharmacy, hospital, or nursing home, that is engaged in the retail sale of dangerous drugs.²

A pain management clinic must apply for licensure in the same way as other terminal distributors and meet the requirements that apply to terminal distributors, as well as the act's additional requirements for pain management clinics. The clinic must comply with rules the State Medical Board is to adopt.³

"Pain management clinic" is defined by the act as a facility to which all of the following apply:

¹ Sections 3 and 4.

² R.C. 4729.01 and 4729.552.

³ R.C. 4729.01, 4729.51, 4729.54, 4729.541, 4729.55, 4729.552, and 4731.054.



(1) The primary component of practice is treatment of pain or chronic pain.

(2) The majority of patients of the prescribers at the facility are provided treatment for pain or chronic pain that includes the use of controlled substances, tramadol, carisoprodol, or other drugs specified by the Medical Board. (Tramadol is an opiate controlled substance used to relieve pain. Carisoprodol is a muscle relaxant used to relieve pain, but is not a controlled substance.)

(3) The facility meets any other identifying criteria established by rule of the Medical Board.

The act's licensure requirements for pain management clinics extend to certain business entities that under prior law were exempt from licensure as terminal distributors. These requirements apply to a business entity that is a pain management clinic or is operating a pain management clinic if the entity is a corporation, limited liability company, partnership, or professional association composed solely of individuals who are authorized to provide the professional services being offered by the business entity. The business entity must be licensed if it is to receive drugs from wholesalers of dangerous drugs.⁴

Exemptions

Under the act, the following are not included in the definition of "pain management clinic," and therefore are not subject to the act's licensure requirements: (1) a hospital registered with the Ohio Department of Health or a facility owned in whole or in part by a hospital, (2) an educational institution or program or affiliated facility to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians, (3) a hospice program licensed by the Ohio Department of Health, and (4) an ambulatory surgical facility.⁵

The act's exclusions from the definition of "pain management clinic" were modified by Am. Sub. H.B. 153 of the 129th General Assembly (the biennial budget act). Instead of excluding *a facility owned in whole or in part by a hospital*, the definition now excludes both of the following:⁶

(1) A facility operated by a hospital for the treatment of pain or chronic pain;

⁴ R.C. 4729.51(B)(2) and 4729.541.

⁵ R.C. 4731.054.

⁶ R.C. 4731.054(A)(5)(b)(i) to (iii), as amended by H.B. 153.

(2) A physician practice owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals.

Under another change made by H.B. 153, the definition of "pain management clinic" now also excludes an interdisciplinary pain rehabilitation program with three-year accreditation from the Commission on Accreditation of Rehabilitation Facilities (CARF).⁷

Clinic operation

In addition to meeting the requirements for licensure as a terminal distributor, an applicant for licensure as a terminal distributor with a pain management clinic classification must submit evidence satisfactory to the Pharmacy Board that the clinic will be operated in accordance with the act's requirements. Under these requirements, the license holder must do all of the following:⁸

(1) Be in control of a facility that is owned and operated solely by one or more physicians authorized by the Medical Board to practice medicine or osteopathic medicine;

(2) Ensure that any person employed by the facility complies with requirements established by the Medical Board for the operation of pain management clinics;

(3) Require any person with ownership of the facility to submit to criminal records check and send the results directly to the Pharmacy Board for review;⁹

(4) Require all employees of the facility to submit to a criminal records check and ensure that no person is employed who has previously been convicted of or pleaded guilty to any felony in Ohio, another state, or the United States;

(5) Maintain a list of each person with ownership of the facility and notify the Pharmacy Board of any changes.

The act's requirement that the license holder ensure that no one employed by the clinic has been convicted of or pleaded guilty to any felony was modified by H.B. 153. Under H.B. 153, the persons who cannot be employed are now limited to persons who

⁷ R.C. 4731.054(A)(5)(b)(vii), as amended by H.B. 153.

⁸ R.C. 4729.552(A) and (B).

⁹ R.C. 4776.01 to 4776.04.

have been convicted of or pleaded guilty to a felony theft offense or felony drug abuse offense, rather than any felony.¹⁰

License issuance

If the Pharmacy Board determines that an applicant meets the requirements for operation of a pain management clinic, the Board is required by the act to issue a category III terminal distributor of dangerous drugs license and specify on the license that the terminal distributor is classified as a pain management clinic.¹¹ A category III license authorizes the license holder to possess, have custody or control of, or distribute any controlled substance.¹² The license fee is \$150.¹³

Medical Board rules for clinics

The act requires the Medical Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) that establish all of the following:¹⁴

- (1) Standards and procedures for the operation of a pain management clinic;
- (2) Standards and procedures to be followed by a physician who provides care at a pain management clinic;
- (3) The other drugs used to treat pain or chronic pain that identify a facility as one that must be licensed as a pain management clinic;
- (4) Other criteria that identify a facility as a pain management clinic subject to licensure;
- (5) Standards and procedures to be followed by a clinic owner in providing supervision, direction, and control of the activities of employees, volunteers, or individuals under contract who provide care at the clinic.

¹⁰ R.C. 4729.552(B)(4), as amended by H.B. 153.

¹¹ R.C. 4729.552(A).

¹² R.C. 3719.41.

¹³ R.C. 4729.54.

¹⁴ R.C. 4731.054.

Sanctions for illegal or improper clinic operation

Administrative fines, criminal penalties, and disciplinary actions

The act authorizes the Pharmacy Board to impose a fine of not more than \$5,000 on a terminal distributor that fails to comply with the requirements for operation of a pain management clinic. A separate fine may be imposed for each day of violation.¹⁵

The act also provides that failure to comply with pain management clinic requirements is a misdemeanor of the first degree. If the offender has previously been convicted of or pleaded guilty to the same offense, the offense is a felony of the fifth degree. Failure to obtain the required license carries the same criminal penalties.¹⁶

The act authorizes the Medical Board to fine physicians at pain management clinics. The Board may impose a fine of not more than \$20,000 on any physician who fails to comply with the Board's rules on clinic operating standards and standards to be followed by physicians providing care at the clinics.¹⁷

Under the act, a physician subject to a fine may also be subject to other Medical Board disciplinary actions. The Board may take these actions against a clinic owner for failing to provide supervision, direction, and control of individuals providing services at the clinic. Disciplinary action may include suspension, without a prior hearing, of the physician's authority to practice medicine.¹⁸

Summary suspension of clinic licenses

The act permits the Pharmacy Board to suspend the license of a terminal distributor of dangerous drugs without a prior hearing under certain circumstances. If the license holder is a physician, the act requires the Pharmacy Board to consult with the secretary of the Medical Board or, if the secretary is unavailable, another physician member of the Medical Board prior to suspending the license.¹⁹

Annual report

For five years, the Pharmacy Board is required to prepare an annual report on the pain management clinic requirements established by the act. Each report must be

¹⁵ R.C. 4729.552(D).

¹⁶ R.C. 4729.552(C) and 4729.99.

¹⁷ R.C. 4731.054(D).

¹⁸ R.C. 4731.054(D) and 4731.22.

¹⁹ R.C. 4729.571.

submitted to the Governor and General Assembly, displayed on the Board's web site, and include all of the following:²⁰

- (1) The total number of applications received by the Board for a terminal distributor of dangerous drugs license with pain management clinic classification;
- (2) The total number of such licenses granted or denied by the Board;
- (3) Any disciplinary actions taken by the Board against the license holders;
- (4) Total revenues generated from fees for the licenses, fines and penalties paid by license holders, or other disciplinary actions taken against license holders;
- (5) Any other relevant information regarding the act's implementation.

WHOLESALEERS AND TERMINAL DISTRIBUTORS

Summary suspension of licenses

The act permits the Pharmacy Board to suspend without a prior hearing the license of a wholesaler of controlled substances or a terminal distributor of dangerous drugs if the Board determines that there is clear and convincing evidence that the method used by the wholesaler or distributor to distribute controlled substances presents a danger of immediate and serious harm to others. The Board is to follow procedures for notification of the suspension without a hearing as provided in the Administrative Procedure Act. The suspension is to remain in effect, unless removed by the Board, until a final order is issued through an administrative hearing. If the Board does not issue a final order within 90 days, the suspension is void on the 91st day after the suspension date.²¹

Application withdrawal

The act provides that, once submitted, an application for licensure as a terminal distributor of dangerous drugs may not be withdrawn by the applicant without the Pharmacy Board's approval.²²

²⁰ Section 8.

²¹ R.C. 3719.031 and 4729.571.

²² R.C. 4729.54.

LIMITS ON PRESCRIBER-FURNISHED CONTROLLED SUBSTANCES

Maximum amounts in a 72-hour or 30-day period

The act establishes limits on the amount of controlled substances that may be personally furnished by a prescriber to patients.²³ Although "personally furnish" is not defined in continuing law or the act, the term is used in the Revised Code to describe the action of a prescriber who provides drugs to a patient for the patient's personal use. This is in contrast to administering the drug to the patient or giving the patient a prescription to be filled by a pharmacist.

Under the act, personally furnishing controlled substances is limited to the following amounts, excluding any amount of methadone personally furnished to a patient for treating drug addiction:²⁴

--In any 72-hour period, an amount of a controlled substance that does not exceed the amount necessary for the patient's use in a 72-hour period;

--In any 30-day period, an amount of all controlled substances combined that does not exceed a total of 2,500 dosage units.

The act applies the limits to all types of prescribers, other than veterinarians.²⁵ In effect, however, the limits apply only to physicians, podiatrists, and dentists. According to the Pharmacy Board, the remaining prescribers (advanced practice nurses, physician assistants, and optometrists) do not have authority to personally furnish controlled substances to patients.

Fines

A prescriber who violates the act's limits on personally furnishing controlled substances is subject to a \$5,000 administrative fine. Each instance of a violation subjects the prescriber to an additional fine.²⁶

²³ R.C. 4729.29 and 4729.291.

²⁴ R.C. 4729.291(C)(1) and (2)(b).

²⁵ R.C. 4729.29(C)(1) and (2)(b).

²⁶ R.C. 4729.291(C)(3).

DRUG TAKE-BACK PROGRAM

Implementation

In collaboration with the Ohio Attorney General and Ohio Department of Alcohol and Drug Addiction Services (ODADAS), the Pharmacy Board is to establish and administer a drug take-back program that collects drugs from the community for destruction or disposal. The first collection of drugs must occur not later than May 20, 2012 (which is one year after the act's effective date).²⁷

Under the act, the Office of the Attorney General is solely responsible for the costs incurred in establishing and administering the program. The Attorney General, ODADAS, and Pharmacy Board are authorized by the act to accept grants, gifts, or donations for the program. The money received is to be deposited in the Drug Take-Back Program Fund established by the act.²⁸

The program is to comply with any state or federal laws regarding the collection, destruction, or disposal of drugs. The program must maintain the confidentiality of individuals who surrender drugs to it.²⁹

The act specifies that no entity is required to participate in the program. It further specifies that declining to participate does not subject an entity to civil liability or professional discipline.³⁰

Rules for operation

The Pharmacy Board, in consultation with the Attorney General and ODADAS, is required by the act to adopt rules that specify the following: (1) the entities that may participate in the program, (2) guidelines and responsibilities for accepting drugs by participating entities, (3) drugs that may be collected, (4) record-keeping requirements, (5) proper methods to destroy unused drugs, (6) privacy protocols and security standards, (7) drug transportation procedures, (8) the schedule, duration, and frequency of the collections of drugs, (9) any other standards and procedures the Board considers necessary.³¹

²⁷ R.C. 109.90(A), 3793.22(A), and 4729.69(A) and (C)(8).

²⁸ R.C. 109.90, 3793.22(B), and 4729.69(I).

²⁹ R.C. 4729.69(B).

³⁰ R.C. 4729.69(H).

³¹ R.C. 4729.69(C).

The act permits the Pharmacy Board to adopt rules allowing a participating entity to return any unused drugs to the pharmacy that dispensed them. The rules must include procedures to be followed to maintain the confidentiality of the person for whom the drug was dispensed. The Board's rules for returning drugs must be in accord with state and federal law.³²

The act provides that the rules adopted by the Pharmacy Board cannot do any of the following: (1) require that an entity establish, fund, or operate a drug take-back program, (2) establish any new licensing requirement or fee, (3) require an entity to collect any data on drugs collected.³³

Data compilation

The Pharmacy Board is authorized by the act to compile data on the amount and type of drugs collected under the program. The Board may cooperate with a public or private entity in obtaining assistance in the data compilation, but the entity cannot be reimbursed.³⁴

If the Board compiles data, it must submit a report to the Governor and the General Assembly. The report, to the extent possible, must include all of the following:³⁵

- (1) Total weight of drugs collected, both with and without packaging;
- (2) The weight of controlled substances;
- (3) The amount of all of the following as a per cent of total drugs collected: controlled substances, brand name drugs, generic drugs, prescription drugs, and non-prescription drugs;
- (4) The amount of vitamins, herbal supplements, and personal care products collected;
- (5) If provided by the person who submitted the drugs, the reason why the drugs were returned or unused.

³² R.C. 4729.69(D).

³³ R.C. 4729.69(E).

³⁴ R.C. 4729.69(F).

³⁵ R.C. 4729.69(G).

OHIO AUTOMATED Rx REPORTING SYSTEM (OARRS)

OARRS modifications

The act modifies the operation of the Ohio Automated Rx Reporting System (OARRS) and establishes criminal penalties for failing to comply with certain statutory requirements. OARRS, established and maintained by the Pharmacy Board, is a drug database used to monitor the misuse and diversion of controlled substances and other dangerous drugs.³⁶

Wholesale distributor reports

Pharmacy Board rules require wholesale distributors and certain terminal distributors of dangerous drugs to report information to OARRS regarding the delivery and dispensing of dangerous drugs.³⁷ In the case of wholesale distributors, the Revised Code prior to the act required reports only on drugs sold to prescribers. The act, like the Board's rules, also requires wholesale distributors to make reports when drugs are delivered to terminal distributors.³⁸

Prescriber reports on personally furnished drugs

The act establishes an OARRS reporting requirement for prescribers who personally furnish to a patient a controlled substance or other dangerous drug specified by the Pharmacy Board. A prescriber must submit the following information:³⁹

- (1) Prescriber identification;
- (2) Patient identification;
- (3) Date drug was personally furnished;
- (4) Indication of whether the drug is new or a refill;
- (5) Name, strength, and national drug code of drug furnished;
- (6) Quantity of drug furnished;
- (7) Number of days' supply of drug furnished.

³⁶ R.C. 4729.75.

³⁷ Ohio Administrative Code 4729-37-03.

³⁸ R.C. 4729.78.

³⁹ R.C. 4729.79.

Prescribers who fail to report information to OARRS may be subject to professional discipline by their respective licensing boards. Under this provision, the licensing boards are the Medical Board and State Dental Board and the prescribers are physicians, podiatrists, and dentists.⁴⁰

Review of information

Prior law specified that prescribers and pharmacists are not required to obtain information about a patient from OARRS.⁴¹ The act eliminates this provision and requires all of the following to review information in OARRS in accordance with rules adopted by the applicable licensing board: (1) dentists, (2) advanced practice nurses with prescriptive authority, (3) optometrists with prescriptive authority, (4) pharmacists, (5) physicians, and (6) physician assistants with prescriptive authority.⁴²

Receipt of information

Information contained in OARRS, any information obtained from it, and information contained in the records of requests for information from OARRS are not public records.⁴³ Under prior law, only the following were permitted to obtain data from OARRS: prescribers, pharmacists, licensing board personnel, law enforcement personnel, grand juries, and individuals seeking information about themselves. The act modifies who may receive OARRS information as follows:⁴⁴

(1) In addition to licensing entities that govern prescribers, an entity may receive information if it licenses individuals who have authority to administer or dispense drugs.

(2) Law enforcement officers investigating drug abuse offenses must be given the information, as opposed to the prior law provision that was permissive and applied to officers involved in any active investigation.

(3) Information must be provided pursuant to a subpoena issued by a grand jury.

⁴⁰ R.C. 4715.30(A)(13) and 4731.22(B)(43).

⁴¹ R.C. 4729.79(D) (prior law renumbered by the act).

⁴² R.C. 4715.302, 4723.487, 4725.092, 4729.161, 4730.53, and 4731.055.

⁴³ R.C. 4729.80(C).

⁴⁴ R.C. 4729.80 and 4729.84.

(4) Information must be provided pursuant to a subpoena, search warrant, or court order in connection with the investigation or prosecution of a possible or alleged criminal offense.

(5) A prescriber's agent registered with the Pharmacy Board, as well as a prescriber, may receive the information.

(6) A licensing entity, law enforcement officer, prescriber, prescriber's agent, or pharmacist from another state's prescription monitoring program, may receive information if there is a written agreement under which the information is to be used and disseminated according to Ohio laws.

(7) A pharmacist may receive information for the purpose of the practice of pharmacy involving the patient, rather than for providing pharmaceutical treatment as provided under prior law.

(8) A prescriber may receive information relating to a current patient.

(9) A medical director of a Medicaid managed care organization may receive information relating to a Medicaid recipient enrolled in the organization, but only if the organization has entered into a data security agreement with the Pharmacy Board. The requirement to enter into these agreements must be implemented by the Medicaid program not later than May 20, 2012 (which is one year after the act's effective date).⁴⁵

(10) The Director of Job and Family Services may receive information relating to a recipient of a program administered by the Department of Job and Family Services.

(11) The Administrator of Workers' Compensation may receive information relating to a Bureau of Workers' Compensation claimant.

Retention of information

Continuing law provides that information collected for OARRS is to be retained for two years. The act, however, provides that two years is the minimum period for retention.⁴⁶

The act eliminates the prior law provision that generally required OARRS information to be destroyed after two years; instead, information is to be destroyed after two years only if it would identify a patient. Patient-identifying information may be retained longer than two years, however, if a law enforcement agency or licensing

⁴⁵ R.C. 5111.1710 and Section 7.

⁴⁶ R.C. 4729.82.

entity has submitted a written request to the Pharmacy Board for retention of the information.⁴⁷

Criminal penalties for misuse of information

The act establishes the following prohibitions and penalties for misuse of OARRS information:⁴⁸

(1) Prohibits a person authorized to receive OARRS information from disseminating any written or electronic document received from OARRS to a person not authorized to receive the document. A person violating this prohibition is guilty of a misdemeanor of the third degree. If the offender has previously been convicted of or pleaded guilty to the same or another OARRS-related offense, the offense is a misdemeanor of the first degree.

(2) Prohibits a person from providing false information to the Pharmacy Board with the intent of obtaining OARRS information. A person violating this prohibition is guilty of a misdemeanor of the first degree. If the offender has previously been convicted of or pleaded guilty to the same or another OARRS-related offense, the offense is a felony of the fifth degree.

(3) Prohibits a person from obtaining OARRS information by any means not permitted by law. A person violating this prohibition is guilty of a felony of the fifth degree. If the offender has previously been convicted of or pleaded guilty to the same or another OARRS-related offense, the offense is a felony of the fourth degree.

Information used in or excluded from legal proceedings

The act's prohibition against improperly disseminating information received from OARRS does not apply if the dissemination is necessary in the investigation or prosecution of a possible or alleged criminal offense.⁴⁹ However, the act prohibits a person from using a document obtained from OARRS as evidence in any civil or administrative proceeding.⁵⁰

⁴⁷ R.C. 4729.82.

⁴⁸ R.C. 4729.86(A) and 4729.99.

⁴⁹ R.C. 4729.86(A)(1).

⁵⁰ R.C. 4729.86(B).

Restrictions on future access

The act authorizes the Pharmacy Board to restrict a person from obtaining further information from OARRS and to determine the extent to which the person's access is to be restricted if any of the following is the case:⁵¹

(1) The person is convicted of or pleads guilty to a violation of the act's prohibitions against improperly disseminating, submitting, or obtaining OARRS information;

(2) The person requested OARRS information in connection with another state's prescription monitoring program and the person's actions in that state would have constituted a violation of the act's prohibitions;

(3) The person did not comply with the act's provision under which an OARRS document cannot be in a civil or administrative proceeding, regardless of the jurisdiction in which the failure to comply occurred.

Funding

The act permits the Pharmacy Board to accept grants, gifts, or donations for OARRS. Any money received is to be deposited in the Drug Database Fund, which the act creates in the state treasury. Money in the Fund is to be used solely for OARRS.⁵²

OARRS improvements

The act requires the Pharmacy Board, in consultation with prescribers and pharmacists, to consider improvements to Ohio's method of monitoring through OARRS the misuse and diversion of controlled substances. Not later than six months after the act's effective date, the Board must submit a report to the Governor, Speaker of the House of Representatives, and President of the Senate. The report must include the following:⁵³

(1) Recommendations on the establishment of a real-time drug database;

(2) Recommendations on improvements to OARRS, including (a) improvements necessary to facilitate information exchange between OARRS and users and (b)

⁵¹ R.C. 4729.86(C).

⁵² R.C. 4729.83.

⁵³ Section 5.

improvements that allow a drug utilization review for monitoring use of controlled substances;

(3) The potential cost of upgrading OARRS or creating a new database;

(4) Information on the availability of, and methods to secure, federal grants to implement the Board's recommendations;

(5) Other matters the Board considers relevant.

OHIO LAW ENFORCEMENT GATEWAY

Access

Access to the Ohio Law Enforcement Gateway (OhLEG) is extended by the act to the Medical Board and Nursing Board. OhLEG, operated under continuing law by the Superintendent of the Bureau of Criminal Identification and Investigation, is a statewide communications network that gathers and disseminates information, data, and statistics for the use of law enforcement agencies. The act requires the Attorney General to permit the Medical Board and the Board of Nursing to access and view, but not alter, information gathered and disseminated through OhLEG.⁵⁴

MEDICAL BOARD DISCIPLINARY ACTIONS

Summary suspensions

The act clarifies that to suspend without a prior hearing the authority to practice of a physician or other person it regulates the Medical Board must find both of the following: (1) that there is clear and convincing evidence that the person has violated a provision for which the person is subject to disciplinary action, and (2) that the person's continued practice presents a danger of immediate and serious harm to the public.⁵⁵

Actions of other regulatory entities

The act expands the situations under which the Medical Board may take action against a physician or other person it regulates based on disciplinary actions taken by another entity. Under the act, the Board is permitted to take action against a physician or other person it regulates based on actions taken by an agency responsible for regulating persons who practice any health care occupation or provide health care services, whether in Ohio or another state, instead of only actions taken in other

⁵⁴ R.C. 109.57, 4723.064, and 4731.391.

⁵⁵ R.C. 4731.054(D) and 4731.22(G).

jurisdictions by agencies responsible for regulating persons who practice medicine, osteopathic medicine, podiatric medicine, massage therapy, or cosmetic therapy.⁵⁶

Telephone conference calls

The act permits the Medical Board to take certain disciplinary actions against a license holder through a telephone conference call. Specifically, it authorizes a conference call to (1) ratify a consent agreement that revokes or suspends a certificate to practice or (2) accept an individual's surrender of a certificate to practice.⁵⁷ The conference call is to be considered a special meeting under the continuing law provisions that require public bodies to conduct business in open meetings. Under that law, at least 24 hours' advance notice of a special meeting must be given to the news media that have requested notification, except when an emergency requires immediate official action.⁵⁸

NURSING BOARD INFORMATION

Access to investigatory information

Law modified by the act provides that information received by the Nursing Board in an investigation is confidential and not subject to discovery in any civil action, except that it may be disclosed to law enforcement officers and government entities investigating a registered nurse, licensed practical nurse, or dialysis technician or a person who may have engaged in the unauthorized practice of nursing. The act permits the Board to disclose information regarding any licensed health care professional.⁵⁹

If the Board provides information to a law enforcement officer or government entity, continuing law prohibits the officer or entity from divulging the information to any other person or government entity. The information may, however, be divulged under certain exceptions that the act modifies. Under the act, the law enforcement officer or government entity is permitted to divulge the information for the purpose of a government investigation, a prosecution, or an adjudication by a court or government entity. This replaces the prior law provision that allowed the information to be divulged only (1) for the purpose of an adjudication to which the person to whom the

⁵⁶ R.C. 4731.22(B)(22).

⁵⁷ R.C. 4731.22(C) and (M)(1).

⁵⁸ R.C. 121.22 (not in the act).

⁵⁹ R.C. 4723.28(I)(1).

information relates is a party and (2) when the adjudication is by a court or licensing or registration board or officer.⁶⁰

CORONER NOTIFICATIONS

Drug overdoses

The act permits a coroner to notify the Medical Board if the coroner determines that a drug overdose is the cause of a person's death. The coroner is authorized to include in the notice any information relating to the overdose, including the physician who prescribed the drug to the decedent.⁶¹

COORDINATED SERVICES PROGRAMS

Medicaid

The act requires each Medicaid managed care organization and the fee-for-service component of the Medicaid program to implement a coordinated services program for Medicaid recipients who are found to have obtained prescription drugs at a frequency or in an amount that is not medically necessary.⁶² For Medicaid managed care, the coordinated services program is to be included in a managed care organization's Medicaid contract.⁶³ Each coordinated services program must be consistent with federal law that allows states to restrict Medicaid recipients to designated providers when they are found to have over-utilized Medicaid services.⁶⁴

Bureau of Workers' Compensation

The act requires the Administrator of Workers' Compensation to implement a coordinated services program for all workers' compensation claimants. The program is to apply to each claimant who is found to have obtained prescription drugs at a frequency or in an amount that is not medically necessary. The program must be operated in a manner that is substantially similar to the Medicaid program's coordinated services programs.⁶⁵

⁶⁰ R.C. 4723.28(I)(1).

⁶¹ R.C. 313.212.

⁶² R.C. 5111.085, 5111.172(B), and 5111.179.

⁶³ R.C. 5111.179.

⁶⁴ 42 United States Code 1396n(a)(2) and 42 Code of Federal Regulations 431.54(e).

⁶⁵ R.C. 4121.50.

Implementation date

The act requires the Medicaid fee-for-service system and the Workers' Compensation Program to each include a coordinated services program by July 1, 2012.⁶⁶ For managed care, the Medicaid program is to begin including the coordinated services program requirement in contracts with managed care organizations not later than July 1, 2012. Once implemented the contract requirement extends to any contract renewal, amendment, or modification on or after the implementation date.⁶⁷

CHRONIC PAIN

Standards for treatment

With respect to the Medical Board's duty to adopt rules establishing standards for physicians who treat patients with intractable pain, the act replaces "intractable pain" with "chronic pain" and redefines the term. As a result, the Board is required to adopt new rules regarding the standards and procedures to be followed by physicians in the diagnosis and treatment of chronic pain.⁶⁸ In addition, the Board is required to approve continuing medical education courses in chronic pain, rather than intractable pain.⁶⁹

Under the act, "chronic pain" is defined as pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically for longer than three continuous months. The term does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition. In contrast to the act's definition of "chronic pain," prior law defined "intractable pain" as a state of pain that is determined, after reasonable medical efforts have been made to relieve the pain or cure its cause, to have a cause for which no treatment or cure is possible or for which none has been found.⁷⁰

⁶⁶ R.C. 4121.50 and 5111.085.

⁶⁷ R.C. 5111.179 and Section 6.

⁶⁸ R.C. 4731.052.

⁶⁹ R.C. 4731.283.

⁷⁰ R.C. 4731.052(A)(2).

MEDICAL BOARD PATIENT SAFETY AND EDUCATION PROGRAMS

Soliciting and accepting grants and services

The act permits the Medical Board to solicit and accept grants and services from public and private sources for the purpose of developing and maintaining programs that address patient safety and education, supply and demand of health care professionals, and information sharing with the public and individuals regulated by the Board. The Board is prohibited from soliciting or accepting a grant or service that would interfere with its independence or objectivity, as determined by the Board. All money received is to be deposited in the Medical Board Education and Patient Safety Fund, which the act creates in the state treasury.⁷¹

COUNTY HOSPITAL PRIVATIZATION

Employee vacation leave

The act provides that certain county hospital employees separating from service as a result of a transfer of the county hospital's assets to a private entity are not entitled to compensation from the county for unused vacation leave from the county when the employee accepts employment with the acquiring entity and the entity assumes the unused vacation leave.⁷²

SUMMARY OF ADMINISTRATIVE FINES

Fines by the Pharmacy Board and Medical Board

The following table summarizes the fines that may be imposed under the act by the Pharmacy Board and Medical Board.

Enforcement agency	Potential offenders	Offense	Maximum fine
Pharmacy Board	Pain management clinics	Failure to comply with any of the requirements for operation of a pain management clinic, including failing to be appropriately licensed	\$5,000 for each day of violation

⁷¹ R.C. 4731.241.

⁷² R.C. 325.19.

Enforcement agency	Potential offenders	Offense	Maximum fine
Pharmacy Board	Physicians, dentists, and other prescribers with authority to personally furnish drugs (excluding veterinarians)	Personally furnishing a controlled substance in an amount that exceeds the act's limits	\$5,000 for each violation
Medical Board	Physicians at pain management clinics	Failure to comply with the Board's rules for the provision of physician care at a pain management clinic or failure as a clinic owner to comply with the Board's rules for providing supervision, direction, and control of individuals who provide treatment	\$20,000

HISTORY

ACTION	DATE
Introduced	02-08-11
Reported, H. Health & Aging	03-03-11
Passed House (97-0)	03-09-11
Reported, S. Health, Human Services & Aging	05-12-11
Passed Senate (30-0)	05-17-11
House concurred in Senate amendments (93-0)	05-18-11

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