



Ohio Legislative Service Commission

Bill Analysis

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H.B. 93

129th General Assembly
(As Introduced)

Reps. Burke and Johnson, Batchelder, Bubp, J. Adams, Boose, Grossman, Hackett, Hottinger, Huffman, Peterson, Pillich, Rosenberger, Ruhl, Uecker

BILL SUMMARY

PAIN MANAGEMENT CLINICS

- Requires licensure of pain management clinics, defined as facilities in which the treatment of pain is the primary component of practice and the majority of chronic pain patients are treated with narcotics or tramadol.
- Requires the State Board of Pharmacy (the Pharmacy Board) to license pain management clinics as terminal distributors of dangerous drugs subject to the same requirements as other terminal distributors of dangerous drugs.
- Requires the State Medical Board (the 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 pain management clinics.
- Authorizes the Pharmacy Board to impose a fine of up to \$5,000 and the Medical Board a fine of up to \$20,000 for failure to follow the rules of operation or standards for pain management clinics.
- Authorizes the Medical Board to suspend, without prior hearing, the medical license of a physician who holds a license as a pain management clinic if the Board determines there is danger of immediate and serious harm to others in the provision of clinic services.

TERMINAL AND WHOLESALE DISTRIBUTORS

- Authorizes the Pharmacy Board to suspend, without prior hearing, the license of a wholesale distributor or terminal distributor of dangerous drugs if the Board determines there is danger of immediate and serious harm to others in the continued operation of the distributor.

- Provides that an application for a terminal distributor of dangerous drugs license may not be withdrawn without the approval of the Pharmacy Board.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 the use of a document obtained from OARRS in a criminal, civil, or administrative proceeding.
- Requires the Medical Board to adopt rules specifying when a physician is required to review information in OARRS.

MEDICAID MANAGED CARE

- Requires the Medicaid managed care system to include coverage of prescription drugs, including drugs prescribed for mental illness.
- Requires Medicaid managed care organizations to establish a coordinated services program under which a Medicaid recipient who overuses the prescription drug benefit is required to use a single pharmacy.

CHRONIC PAIN

- Eliminates existing provisions dealing with treatment of "intractable pain" by physicians and requires the Medical Board to approve continuing education courses and procedures to be followed by physicians in treating "chronic pain."

NURSE PRESCRIPTIVE AUTHORITY

- Specifies that an advanced practice nurse's prescriptive authority must be used in conformance with any rules adopted by the Medical Board governing physician prescribing.

MEDICAL BOARD EDUCATION AND PATIENT SAFETY PROGRAMS

- Establishes the Drug Database Fund and the Medical Board Education and Patient Safety Fund.

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CONTENT AND OPERATION

PAIN MANAGEMENT CLINICS

Overview

The bill requires that a facility operating as a pain management clinic be licensed by the State Board of Pharmacy (the Pharmacy Board) as a terminal distributor of dangerous drugs with a pain management classification, even if it is operated by a business entity that is not otherwise required to be licensed as a terminal distributor of dangerous drugs. The operation of a pain management clinic must comply with rules to be adopted by the State Medical Board (the Medical Board).¹

"Pain management clinic" is defined by the bill as a facility that (1) as the primary component of its practice, provides treatment for pain and (2) provides the majority of its patients treatment for chronic pain with the use of controlled substances that are narcotic drugs or with the use of tramadol. Tramadol is a controlled substance used to relieve pain, but it is not a narcotic drug.

Under the bill, the following are not included as a pain management clinic: (1) a hospital registered with the Ohio Department of Health or facility owned by such a hospital, (2) a medical or dental school affiliated with a state institution of higher education or an institution that holds a certificate of authorization issued by the Ohio Board of Regents, (3) a facility affiliated with such a medical or dental school, or (4) a hospice program licensed by the Ohio Department of Health.²

Licensure requirements for pain management clinics

General requirements for terminal distributor licensure

Possession and distribution of dangerous drugs, including controlled substances, is strictly controlled under state law. Current law provides, with exceptions, that to

¹ R.C. 4729.51, 4729.54, 4729.541, and 4731.054.

² R.C. 4731.054.

legally possess, have custody or control of, or distribute dangerous drugs at retail a person or entity must be licensed by the Pharmacy Board as a terminal distributor of dangerous drugs.³ To obtain the license, an applicant must meet a number of requirements, including requirements dealing with supervision of employees and safeguarding of drugs. A wholesale distributor may sell drugs, at wholesale, only to licensed terminal distributors and licensed health professionals authorized to prescribe drugs (prescribers).⁴

Specific requirements for pain management clinic licensure

The bill establishes a "pain management clinic" classification for terminal distributors of dangerous drugs.⁵ Pain management clinics are required to apply for licensure in the same way as other terminal distributors and meet the same requirements.⁶ The bill's licensure requirements for pain management clinics extend to certain business entities that are otherwise exempt under current law from licensure as terminal distributors. Specifically, 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. Unless the business entity is licensed, it cannot receive drugs from wholesale distributors.⁷

Operation of the clinic

In addition to meeting the general requirements for licensure as a terminal distributor, an applicant for licensure as a terminal distributor with a pain management clinic classification must meet the following requirements pertaining to the clinics:

(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 or solely by a business entity that is required by the Revised Code to be composed of individuals who are prescribers and are authorized to provide the professional services being offered by the business entity;

³ R.C. 4729.551.

⁴ R.C. 4729.51.

⁵ R.C. 4729.51 and 4729.54.

⁶ R.C. 4729.54 and 4729.55.

⁷ R.C. 4729.51(B)(2) and 4729.541.

(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;⁸

(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.⁹

Criminal records check

To obtain a criminal records check, a person must submit a request to the Bureau of Criminal Identification and Investigation (BCII). The request must be accompanied by the appropriate form, a set of fingerprint impressions, and the fee established by BCII. The person must also request that BCII obtain from the Federal Bureau of Investigation (FBI) any information it has on the person. The results of the criminal records check and any information provided by the FBI are to be made available only to the person who requested the records check and the employer or potential employer specified in the request.¹⁰

License issuance

If the Pharmacy Board determines that an applicant has demonstrated compliance with the requirements for a pain management clinic classification, the Board is required by the bill 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. A category III license authorizes the license holder to possess, have custody or control of, or distribute any controlled substance contained in schedule I, II, III, IV, or V. These schedules consist of categories of dangerous drugs that are scheduled based on their potential for abuse.¹¹ As under current law, the license fee is \$150.¹²

⁸ R.C. 4776.01 to 4776.04.

⁹ R.C. 4729.552.

¹⁰ R.C. 4729.071, 4776.02, and 4776.04.

¹¹ R.C. 3719.41.

¹² R.C. 4729.54.

Medical Board rules for pain management clinics

The bill requires the Medical Board to adopt rules in accordance with the Administrative Procedure Act that establish both of the following:

- (1) Standards and procedures for the operation of pain management clinics by physicians;
- (2) Standards and procedures to be followed by physicians who provide care at pain management clinics.¹³

Sanctions for illegal or improper operation of a pain management clinic

The bill permits both the Pharmacy Board and the Medical Board to impose sanctions for operation of a pain management clinic without a terminal distributor license or operation of a licensed pain management clinic other than in accordance with the Revised Code and rules adopted by the Boards.

Administrative fines and criminal penalties

The bill provides for fines or criminal penalties to be imposed on pain management clinic license holders and physicians employed by pain management clinics.

Under the bill, the Pharmacy Board may impose a fine of no more than \$5,000 on a terminal distributor that fails to comply with the requirements for a pain management clinic classification. A separate fine may be imposed for each day of violation. The bill 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.¹⁴

The bill permits the Medical Board to fine physicians employed by pain management clinics. The Board may impose a fine of no more than \$20,000 on any physician who fails to comply with the Board's rules on pain management clinic operating standards and standards to be followed by physicians providing care at the clinics. The bill further provides that a physician holding a terminal distributor of dangerous drugs license with pain management clinic classification is subject to disciplinary action by the Medical Board if any person employed by the clinic has

¹³ R.C. 4731.054.

¹⁴ R.C. 4729.552 and 4729.99.

violated any criminal drug law of this state or is subject to disciplinary action under the laws governing nurses and physician assistants.¹⁵

Summary suspension of clinic and physician licenses

As discussed below (see "**Summary suspensions of licenses--in general**"), the bill permits the Pharmacy Board to suspend the license of a terminal distributor of dangerous drugs without a prior hearing under certain circumstances. If a terminal distributor is classified as a pain management clinic and the person who holds the terminal distributor license also holds a certificate to practice as a physician, the bill provides that, prior to suspending the license without a prior hearing, the Pharmacy Board must consult with the secretary of the Medical Board or, if the secretary is unavailable, another member of the Medical Board.¹⁶

The bill permits the Medical Board to suspend without a prior hearing the certificate to practice of a physician who holds a terminal distributor license with a pain management clinic classification if the Board determines both of the following (see **COMMENT**):

(1) That there is clear and convincing evidence that an employee of the pain management clinic has engaged in behavior for which the Medical Board may take disciplinary action;

(2) The continued operation of the pain management clinic presents a danger of immediate and serious harm to others.

The secretary and supervising member of the Medical Board are to provide written allegations to the Board. Upon review of the allegations and by an affirmative vote of no less than six members, excluding the secretary and supervising member who provided the allegations, the Board may suspend the physician's certificate to practice without a prior hearing. The bill specifies that a telephone conference call may be utilized for reviewing the allegations and taking a vote on the suspension.

The Medical Board is to follow the suspension notification procedure as provided under the Administrative Procedure Act, except that the Board may provide notice in person rather than through the mail. The bill provides that the order is not subject to suspension by the court during pendency of any appeal of the order.

¹⁵ R.C. 4731.054 and 4731.22.

¹⁶ R.C. 4729.571.

The physician subject to the order may request an adjudicatory hearing. If requested, the hearing date is to be not less than 15, but not earlier than seven, days after the request is made, unless otherwise agreed to by the Medical Board and physician. The suspension, unless reversed on appeal, is to remain in effect until a final adjudicative order issued by the Board becomes effective. The Board is required to issue its final order no later than 75 days after completion of its hearing. If the Board fails to issue the order by that day, the suspension is dissolved, but this dissolution does not invalidate any subsequent, final order.¹⁷

TERMINAL AND WHOLESALE DISTRIBUTORS

Summary suspensions of licenses--in general

The bill permits the Pharmacy Board to suspend without a prior hearing the license of a terminal distributor of dangerous drugs or a wholesale distributor of dangerous drugs if the Board determines that there is clear and convincing evidence that the method used by the distributor to distribute controlled substances presents a danger of immediate and serious harm to others. The Board is to follow procedures for the notification of the suspension without a hearing as provided under 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 to be void on the 91st day after the date of the suspension.¹⁸

Application withdrawal

The bill provides that, once submitted, an application for licensure as a terminal distributor of dangerous drugs may not be withdrawn by the applicant without the approval of the Pharmacy Board.¹⁹

LIMITS ON PRESCRIBER-FURNISHED CONTROLLED SUBSTANCES

The bill establishes limits on the amount of controlled substances that may be personally furnished by prescribers on a monthly and daily basis. Although "personally furnish" is not defined in current law or the bill, it is a term that is used to describe the action of a prescriber who provides a whole or partial supply of drugs to a patient for the patient's personal use. This is in contrast to the action of directly administering a drug to a patient.

¹⁷ R.C. 4731.228.

¹⁸ R.C. 4729.561.

¹⁹ R.C. 4729.54.

The bill's specific limits on personally furnishing controlled substances are as follows:

--**Monthly:** In any 30-day period, an amount of all controlled substances combined that exceeds a total of 2,500 dosage units;

--**Daily:** In any 24-hour period, an amount of a controlled substance provided to or for a patient that exceeds the amount necessary for the patient's use in a 24-hour period.

The types of prescribers who are subject to the bill's limits on the amount of controlled substances that may be personally furnished are the following: (1) physicians, (2) dentists, (3) certain advanced practice nurses, (4) physician assistants, and (5) optometrists. The bill's limitations do not apply to veterinarians.

If a prescriber violates the bill's limitations, the prescriber is subject to a \$5,000 fine. Each instance of a violation is subject to an additional fine.²⁰

DRUG TAKE-BACK PROGRAM

In collaboration with the Attorney General and 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 the purpose of destruction or disposal. Any costs of the program are to be divided equally between the Board, Attorney General, and ODADAS. The first collection of drugs must occur no later than December 31, 2011.

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 the program.

Entities that participate in the program are authorized to compile data on the types and amounts of drugs surrendered, but the entities must protect the confidentiality of those individuals. The program cannot reimburse the entities for the costs of compiling the data.

The Board, in collaboration with the Attorney General and ODADAS, is required by the bill to adopt rules that provide (1) who may participate in the program, (2) drugs

²⁰ R.C. 4729.29, 4729.291, and 4729.99.

that may be collected, (3) schedule, frequency, and duration of collections, and (4) procedures to maintain confidentiality of individuals surrendering drugs.²¹

OHIO AUTOMATED Rx REPORTING SYSTEM (OARRS)

OARRS modifications

The bill modifies the operation of OARRS and establishes criminal penalties for failing to comply with certain requirements of the system. OARRS, which was established and is maintained by the Pharmacy Board is a drug database used to monitor the misuse and diversion of controlled substances and other dangerous drugs.

Those required to report to or review information in OARRS

Rules adopted by the Pharmacy Board require wholesale distributors and certain terminal distributors of dangerous drugs to report information to OARRS regarding the delivery and dispensing of dangerous drugs.²² In the case of wholesale distributors, current statute refers to reports being required only when drugs are sold to prescribers. The bill, as under the current Pharmacy Board rule, requires wholesale distributors to make reports also when drugs are delivered to terminal distributors (i.e., pharmacies).²³

The bill establishes an OARRS reporting requirement for physicians who personally furnish a drug to a patient. Specifically, a prescriber must submit the following information:

- (1) Physician name;
- (2) Patient identification;
- (3) Date drug was personally furnished by the physician;
- (4) Indication of whether the drug is new or a refill;
- (5) Name and strength of drug furnished;
- (6) Quantity of drug furnished;

²¹ R.C. 109.90, 3793.22, and 4729.69.

²² Ohio Administrative Code 4729-37-03.

²³ R.C. 4729.78.

(7) Number of days' supply of drug furnished.²⁴

Current law includes a specific statement that prescribers and pharmacists are not required to obtain information about a patient from OARRS. The bill eliminates this statement but does not specifically require prescribers or pharmacists to obtain information from OARRS.²⁵

Those who are permitted to obtain information in OARRS

Data contained in OARRS, any information obtained from it, and information contained in the records of requests for information from OARRS are not public records.²⁶ Only the following are permitted to obtain data from OARRS under current law: (1) prescribers and pharmacists, (2) licensing board personnel, (3) law enforcement personnel, (4) grand juries, and (5) individuals seeking information about themselves.

The bill modifies who may receive information from OARRS as follows:

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

(2) Law enforcement officers who may receive information are limited to those investigating drug abuse offenses, rather than those involved in any active investigation, as permitted under current law.

(3) Information provided pursuant to a subpoena issued by a grand jury may relate to the person who is the subject of an investigation of any offense.

(4) A "prescriber's agent registered with the board," as well as a prescriber, may receive information from OARRS.

(5) 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 with that state under which the information is to be used and disseminated according to Ohio laws.

(6) A pharmacist may receive information for the purpose of "the practice of pharmacy involving the patient" rather than for "providing pharmaceutical treatment" as under current law.

²⁴ R.C. 4729.79.

²⁵ R.C. 4729.79.

²⁶ R.C. 4729.79(C).

(7) A physician may receive information relating to a current patient if the physician is in compliance with rules adopted by the State Medical Board regarding the use of such information (see "**Physician use of OARRS**," below).

(8) 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. For purposes of this provision, each Medicaid managed care organization is required to enter into a data security agreement with the Board not later than one year after the bill's effective date.²⁷

(9) The Director of Job and Family Services may receive information relating to a recipient of a program administered by the Department.²⁸

Retention of OARRS information

As under current law, the bill provides that information collected in OARRS is to be retained for at least two years. The bill eliminates the provision of existing law that generally requires OARRS information to be destroyed after two years. Instead, the bill requires information 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 entity has submitted a written request to the Board for retention of the identifying information in the database.²⁹

Criminal penalties

The bill establishes the following prohibitions and penalties for misuse of the information contained within OARRS:

(1) Prohibits a person authorized to receive information from OARRS from disseminating any written or electronic document received from the database 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 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

²⁷ R.C. 5111.1710 and Section 3(C).

²⁸ R.C. 4729.80 and 4729.84.

²⁹ R.C. 4729.82.

guilty of a misdemeanor of the first degree. If the offender has previously been convicted of or pleaded guilty to the same or a related offense, the offense is a felony of the fifth degree.

(3) Prohibits a person from obtaining OARRS information by any means other than those 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 related offense, the offense is a felony of the fourth degree.³⁰

Restrictions due to using OARRS data in legal proceedings

The bill prohibits a person from using a document obtained from the database as evidence in any civil, criminal, or administrative proceeding. The Pharmacy Board is authorized under the bill to restrict a person who fails to comply with this requirement from obtaining further information from OARRS. The Board is to determine the extent to which the person is restricted access.³¹

Funding acceptance

The bill permits the Board to accept grants, gifts, or donations to operate OARRS. Any grants, gifts, or donations are to be deposited in the Drug Database Fund, which is created in the state treasury by the bill. The money in the Fund is to be used solely for the operation of OARRS.³²

Physician use of OARRS

Current law does not require a physician to review information in OARRS. The bill requires the Medical Board to adopt rules that establish standards and procedures to be followed by physicians regarding the review of patient information available through the drug database.³³

Pharmacy Board review of OARRS

The bill requires the Pharmacy Board to consider improvements to Ohio's method of monitoring through OARRS the misuse and diversion of controlled substances. The Board is to submit a report not later than six months after the bill's effective date. The report must include the following:

³⁰ R.C. 4729.86 and 4729.99.

³¹ R.C. 4729.86.

³² R.C. 4729.83.

³³ R.C. 4731.055.

- (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) 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.³⁴

MEDICAID MANAGED CARE

Coverage of prescription drugs

The bill requires that the Medicaid program's coverage of prescription drugs be included in the managed care system. The requirement replaces the existing provision under which inclusion of the coverage in managed care is permissive. The bill specifies that the coverage must include drugs prescribed for the purpose of treating mental illness that are covered under the Medicaid fee-for-service system.³⁵

To implement this provision, the bill requires that each contract between the Ohio Department of Job and Family Services (ODJFS) and a health insuring corporation include the coverage requirement. This contracting provision extends to any contract renewal, amendment, or modification that occurs after the bill's effective date.³⁶

As under current law, the health insuring corporation may establish strategies, subject to ODJFS approval, for the management of drug utilization. These strategies may require prior authorization before obtaining a controlled substance. However, the bill excludes drugs prescribed for the treatment of mental illness from any drug utilization strategies.³⁷

³⁴ Section 4.

³⁵ R.C. 5111.172.

³⁶ R.C. 5111.172(A) and Section 3(A) of the bill.

³⁷ R.C. 5111.172(B).

Coordinated services program

The bill requires each contract between ODJFS and a Medicaid managed care organization to require implementation of a coordinated services program for Medicaid recipients who are found to have obtained prescription drugs at a frequency or amount that is not medically necessary. The 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.³⁸

Single pharmacy designation

Under a coordinated services program, the Medicaid managed care organization must require the Medicaid recipient to have prescriptions filled at a single pharmacy, except in emergencies. The recipient must be permitted to designate the single pharmacy.

The bill requires the ODJFS Director to adopt rules under the Administrative Procedure Act specifying what constitutes an emergency under which the Medicaid recipient may obtain prescription drugs from another pharmacy. The rules may include as an emergency any period in which the recipient is a hospital inpatient or a nursing facility resident.³⁹

Implementation date

The bill requires ODJFS to begin including the coordinated services program requirement in contracts with managed care organizations not later than one year after the bill's effective date. Once ODJFS implements the requirement, the bill provides that the requirement extends to any contract renewal, amendment, or modification after the implementation date.⁴⁰

CHRONIC PAIN

Standards for diagnosis and treatment

With respect to the Medical Board's existing duty to adopt rules establishing standards for physicians who treat patients with intractable pain, the bill replaces the term "intractable pain" with "chronic pain" and redefines the term. As a result, the Board will be required to adopt new rules regarding the standards and procedures to be

³⁸ R.C. 5111.179, 42 U.S.C. 1396n(a)(2), and 42 C.F.R. 431.54(e).

³⁹ R.C. 5111.179.

⁴⁰ Section 3(B).

followed by physicians in the diagnosis and treatment of chronic, rather than intractable pain.⁴¹

Similarly, the Board will be required to approve continuing medical education courses in chronic pain, rather than intractable pain.⁴²

Terminology

Under the bill, "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." Specifically excluded from the definition of "chronic pain" is 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 bill's definition of "chronic pain," existing law defines "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.

NURSE PRESCRIPTIVE AUTHORITY

An advanced practice nurse with authority to prescribe drugs must practice with a collaborating physician or podiatrist. The nurse's prescriptive authority may not "exceed the prescriptive authority of the collaborating physician or podiatrist." The bill modifies this by adding that the nurse's prescriptive authority must "be in conformance with any rules adopted by the State Medical Board . . . governing physician or podiatrist prescribing."⁴³

MEDICAL BOARD EDUCATION AND PATIENT SAFETY PROGRAMS

The bill permits the State 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 the Board's independence or objectivity, as determined by the Board.

⁴¹ R.C. 4731.052.

⁴² R.C. 4731.283.

⁴³ R.C. 4723.481.

All money received by the Board is to be deposited in the Medical Board Education and Patient Safety Fund, which the bill creates in the state treasury.⁴⁴

COMMENT

The bill permits the Medical Board to summarily suspend the medical license of a physician who is the holder of a terminal distributor license with a pain management clinic classification whenever there is clear and convincing evidence that a clinic employee has engaged in any behavior for which the Board may take disciplinary action. There is no requirement for the Board to find that continued practice by the physician endangers the public.

Because summary suspension is an exception to the constitutional guarantee of due process of law, courts usually permit it to be used only if there is an imminent danger of serious harm to persons or property. Since this type of danger would not necessarily be the case under the bill's summary suspension provision, a court could find the provision to be unconstitutional.⁴⁵

HISTORY

ACTION	DATE
Introduced	02-08-11

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⁴⁴ R.C. 4731.241.

⁴⁵ See *Macky v. Montrym* (1979), 443 U.S. 1, 17, 99 S.Ct. 2689.