

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4537**

BY DELEGATES STANSBURY, BATES, ROHRBACH,

PERDUE, SOBONYA AND ELLINGTON

[Passed March 12, 2016; in effect ninety days from  
passage.]

1 AN ACT to amend and reenact §16-5H-2, §16-5H-5 and §16-5H-7 of the Code of West Virginia,  
2 1931, as amended, all relating to the regulation of chronic pain clinics; updating definitions;  
3 deleting an exemption for affiliation with a medical school; and clarifying due process  
4 concerns regarding the process for hearing notices upon appeal.

*Be it enacted by the Legislature of West Virginia:*

1 That §16-5H-2, §16-5H-5 and §16-5H-7 of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted, all to read as follows:

**ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.**

**§16-5H-2. Definitions.**

1 (a) "Chronic pain" means pain that has persisted after reasonable medical efforts have  
2 been made to relieve the pain or cure its cause and that has continued, either continuously or  
3 episodically, for longer than three continuous months. For purposes of this article, "chronic pain"  
4 does not include pain directly associated with a terminal condition.

5 (b) "Director" means the Director of the Office of Health Facility Licensure and Certification  
6 within the Office of the Inspector General.

7 (c) "Owner" means any person, partnership, association or corporation listed as the owner  
8 of a pain management clinic on the licensing forms required by this article.

9 (d) "Pain management clinic" means all privately owned pain management clinics, facilities  
10 or offices not otherwise exempted from this article and which meets both of the following criteria:

11 (1) Where in any month more than fifty percent of patients of the clinic are prescribed or  
12 dispensed opioids or other controlled substances specified in rules promulgated pursuant to this  
13 article for chronic pain resulting from conditions that are not terminal; and

14 (2) The facility meets any other identifying criteria established by the secretary by rule.

15 (e) "Physician" means an individual authorized to practice medicine or surgery or  
16 osteopathic medicine or surgery in this state.

17 (f) "Prescriber" means an individual who is authorized by law to prescribe drugs or drug  
18 therapy related devices in the course of the individual's professional practice, including only a  
19 medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant  
20 or osteopathic physician assistant who holds a certificate to prescribe drugs; or an advanced  
21 nurse practitioner who holds a certificate to prescribe.

22 (g) "Secretary" means the Secretary of the West Virginia Department of Health and  
23 Human Resources. The secretary may define in rules any term or phrase used in this article which  
24 is not expressly defined.

**§16-5H-5. Exemptions.**

1 (a) The following facilities are not pain management clinics subject to the requirements of  
2 this article:

3 (1) A facility that does not prescribe or dispense controlled substances for the treatment  
4 of chronic pain;

5 (2) A hospital licensed in this state, a facility located on the campus of a licensed hospital  
6 that is owned, operated or controlled by that licensed hospital, and an ambulatory health care  
7 facility as defined by section two, article two-d, chapter sixteen of this code that is owned, operated  
8 or controlled by a licensed hospital;

9 (3) A physician practice owned or controlled, in whole or in part, by a licensed hospital or  
10 by an entity that owns or controls, in whole or in part, one or more licensed hospitals;

11 (4) A hospice program licensed in this state;

12 (5) A nursing home licensed in this state;

13 (6) An ambulatory surgical facility as defined by section two, article two-d, chapter sixteen  
14 of this code; and

15 (7) A facility conducting clinical research that may use controlled substances in studies  
16 approved by a hospital-based institutional review board or an institutional review board accredited  
17 by the association for the accreditation of human research protection programs.

18 (b) Any facility that is not included in this section may petition to the secretary for an  
19 exemption from the requirements of this article. All such petitions are subject to the administrative  
20 procedures requirements of chapter twenty-nine-a of this code.

**§16-5H-7. Suspension; revocation.**

1 (a) The secretary may suspend or revoke a license issued pursuant to this article if the  
2 provisions of this article or of the rules promulgated pursuant to this article are violated. The  
3 secretary may revoke a clinic's license and prohibit all physicians associated with that pain  
4 management clinic from practicing at the clinic location based upon an annual or periodic  
5 inspection and evaluation.

6 (b) Before any such license is suspended or revoked, however, written notice shall be  
7 given to the licensee, stating the grounds of the complaint and shall provide notice of the right to  
8 request a hearing. The notice shall be sent by certified mail to the licensee at the address where  
9 the pain management clinic concerned is located. The licensee shall be entitled to be represented  
10 by legal counsel at the hearing.

11 (c) If a license is revoked pursuant to this article, a new application for a license may be  
12 considered by the secretary if, when and after the conditions upon which revocation was based  
13 have been corrected, and evidence of this fact has been furnished to the secretary. A new license  
14 may then be granted after proper inspection has been made and all provisions of this article and  
15 rules promulgated pursuant to this article have been satisfied.

16 (d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall  
17 apply and govern any hearing authorized and required by the provisions of this article and the  
18 administrative procedure in connection therewith.

19 (e) Any applicant or licensee who is dissatisfied with the decision of the secretary as a  
20 result of the hearing provided in this section may, within thirty days after receiving notice of the  
21 decision, appeal the decision to the circuit court of Kanawha County, in term or in vacation, for  
22 judicial review of the decision.

23           (f) The court may affirm, modify or reverse the decision of the secretary and either the  
24 applicant or licensee or the secretary may appeal from the court's decision to the Supreme Court  
25 of Appeals.

26           (g) If the license of a pain management clinic is revoked or suspended, the designated  
27 physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic property  
28 shall cease to operate the facility as a pain management clinic as of the effective date of the  
29 suspension or revocation. The owner or lessor of the clinic property is responsible for removing  
30 all signs and symbols identifying the premises as a pain management clinic within thirty days.

31           (h) Upon the effective date of the suspension or revocation, the designated physician of  
32 the pain management clinic shall advise the secretary and the Board of Pharmacy of the  
33 disposition of all drugs located on the premises. The disposition is subject to the supervision and  
34 approval of the secretary. Drugs that are purchased or held by a pain management clinic that is  
35 not licensed may be deemed adulterated.

36           (i) If the license of a pain management clinic is suspended or revoked, any person named  
37 in the licensing documents of the clinic, including persons owning or operating the pain  
38 management clinic, may not, as an individual or as part of a group, apply to operate another pain  
39 management clinic for five years after the date of suspension or revocation.

40           (j) The period of suspension for the license of a pain management clinic shall be prescribed  
41 by the secretary, but may not exceed one year.