

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4537**

BY DELEGATES STANSBURY, BATES, ROHRBACH,

PERDUE, SOBONYA AND ELLINGTON

BY REQUEST OF THE DEPARTMENT OF HEALTH AND

HUMAN RESOURCES

[Introduced February 15, 2016; Referred  
to the Committee on Health and Human Resources  
then the Judiciary.]

1 A BILL 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; and clarifying 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. ~~or with a progressive disease~~  
5 ~~that, in the normal course of progression, may reasonably be expected to result in a terminal~~  
6 ~~condition~~

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

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

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

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

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

18 (e) "Physician" means an individual authorized to practice medicine or surgery or

19 osteopathic medicine or surgery in this state.

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

25 (g) "Secretary" means the Secretary of the West Virginia Department of Health and Human  
 26 Resources. The secretary may define in rules any term or phrase used in this article which is not  
 27 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 is affiliated with an accredited medical school at which training is provided~~  
 4 ~~for medical or osteopathic students, residents or fellows, podiatrists, dentists, nurses, physician~~  
 5 ~~assistants, veterinarians or any affiliated facility to the extent that it participates in the provision of~~  
 6 ~~the instruction;~~

7 ~~(2) (1)~~ A facility that does not prescribe or dispense controlled substances for the treatment  
 8 of chronic pain;

9 ~~(3) (2)~~ A hospital licensed in this state, a facility located on the campus of a licensed  
 10 hospital that is owned, operated or controlled by that licensed hospital, and an ambulatory health  
 11 care facility as defined by section two, article two-d, chapter sixteen of this code that is owned,  
 12 operated or controlled by a licensed hospital;

13 ~~(4) (3)~~ A physician practice owned or controlled, in whole or in part, by a licensed hospital  
 14 or by an entity that owns or controls, in whole or in part, one or more licensed hospitals;

15 ~~(5) (4)~~ A hospice program licensed in this state;

16 ~~(6) (5)~~ A nursing home licensed in this state;

17           ~~(7)~~ (6) An ambulatory surgical facility as defined by section two, article two-d, chapter  
18 sixteen of this code; and

19           ~~(8)~~ (7) A facility conducting clinical research that may use controlled substances in studies  
20 approved by a hospital-based institutional review board or an institutional review board accredited  
21 by the association for the accreditation of human research protection programs.

22           (b) Any facility that is not included in this section may petition to the secretary for an  
23 exemption from the requirements of this article. All such petitions are subject to the administrative  
24 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 clinics 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 the date, time and place set for~~  
8 ~~the hearing on the complaint, which date shall not be less than thirty days from the time notice is~~  
9 ~~given~~ The notice shall be sent by certified mail to the licensee at the address where the pain  
10 management clinic concerned is located. The licensee shall be entitled to be represented by legal  
11 counsel at the hearing.

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

17           (d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall

18 apply to and govern any hearing authorized and required by the provisions of this article and the  
19 administrative procedure in connection therewith.

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

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

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

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

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

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

NOTE: The purpose of this bill is to update definitions and exemptions and clarify hearing notice procedures with regard to the regulation of chronic pain clinics.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.