

Regular Session, 2014

SENATE BILL NO. 619

BY SENATOR HEITMEIER

HEALTH SERVICES. Transfers the powers, duties, and functions relative to regulating pain management clinics from the Department of Health and Hospitals to the Louisiana State Board of Medical Examiners. (1/1/15)

1 AN ACT

2 To amend and reenact R.S. 40:2198.12(A), the introductory paragraph of (B)(1) and  
3 (B)(1)(f), (D), and 2198.13 and to enact R.S. 40:2198.12(B)(1)(h) through (j), and  
4 2198.14 through 2198.20, relative to pain management clinics; to transfer the powers  
5 and duties for the regulation of pain management clinics from the Department of  
6 Health and Hospitals to the Louisiana State Board of Medical Examiners; to provide  
7 licensure authority and powers to the Louisiana State Board of Medical Examiners  
8 to regulate and license pain management clinics; to provide for criminal penalties for  
9 operating a pain management clinic without a license; to provide relative to scope  
10 of practice prohibitions; to provide an effective date; and to provide for related  
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 40:2198.12(A), the introductory paragraph of (B)(1) and (B)(1)(f),  
14 (D), and 2198.13 are hereby amended and reenacted and R.S. 40:2198.12(B)(1)(h) through  
15 (j) and 2198.14 through 2198.20 are hereby enacted to read as follows:

16 §2198.12. Licensure of pain management clinics; rules and regulations

17 A. Except as provided in Subsection D of this Section, all pain management

1 clinics shall be owned and operated by a physician certified in the subspecialty of  
2 pain management by a member board of the American Boards of Medical  
3 Specialties, **the American Osteopathic Association, and such other entities as the**  
4 **board may approve.** All pain management clinics shall be licensed by the  
5 **department board.**

6 B.(1) The **department board** shall prescribe and publish minimum standards,  
7 rules, and regulations as necessary to effectuate the provisions of this Section. Such  
8 rules and regulations shall include but not be limited to all of the following:

9 \* \* \*

10 (f) Reimbursement policies, procedures, and requirements, **including but not**  
11 **limited to the requirement to accept payment from third party payors.**

12 \* \* \*

13 **(h) The submission of periodic reports to the board.**

14 **(i) Utilization of a disclosure form developed by the board.**

15 **(j) Accessing the Prescription Monitoring Program information on a**  
16 **regular basis.**

17 \* \* \*

18 D.(1) The following shall apply to pain management clinics operating on or  
19 before June 15, 2005, pursuant to an occupational license or certificate of operation  
20 which has not been suspended or revoked:

21 ~~(1)~~**(a)** The pain management clinic shall not be owned, either in whole or in  
22 part, by or have any contractual relationship, whether through employment or by  
23 independent contract, with a physician who during the course of his practice has been  
24 denied the privilege of prescribing, dispensing, administering, supplying, or selling  
25 any controlled dangerous substance and who has, during the course of his practice  
26 had board action taken against his medical license as a result of dependency on drugs  
27 or alcohol.

28 ~~(2)~~**(b)** The pain management clinic shall be operated by a medical director  
29 who shall be a physician. **The medical director shall be responsible for**

1 **compliance with all applicable laws and rules.**

2 ~~(3)~~**(c)** The pain management clinic shall not be owned in whole or in part by  
3 a person who has been convicted of or who has pled guilty or nolo contendere to an  
4 offense that constitutes a felony.

5 ~~(4)~~**(d)** The pain management clinic shall not be owned in whole or in part by  
6 a person who has been convicted of or who has pled guilty or nolo contendere to an  
7 offense that constitutes a misdemeanor, the facts of which relate to the distribution  
8 or illegal prescription of any narcotic.

9 ~~(5)~~**(e)** The pain management clinic shall operate as an urgent care facility,  
10 offering primary or acute health services in addition to caring for those with chronic  
11 pain and shall have held itself out to the public as such.

12 ~~(6)~~**(f)** The pain management clinic shall implement policies and procedures  
13 that are consistent with all pain management regulations issued by the State Board  
14 of Medical Examiners.

15 ~~(7)~~**(g)** A pain management clinic which is exempted from the requirement of  
16 being owned and operated by a physician certified in the subspecialty of pain  
17 management may relocate and continue to be exempted from the requirement of  
18 being owned and operated by a physician certified in the subspecialty of pain  
19 management if the new location is in the same parish in which the original clinic was  
20 located.

21 ~~(8)~~**(h)** All pain management clinics shall submit to the ~~department~~ **board** all  
22 relevant documentation proving valid operation before June 15, 2005, including but  
23 not limited to occupational licenses or certificates of operation issued by local  
24 authorities.

25 **(2) A pain management clinic that is not licensed by or has not made an**  
26 **application to the department for licensure under this Part on or before August**  
27 **1, 2014, shall not be licensed under the exemption to Subsection A of this**  
28 **Section as provided for in this Subsection.**

29 \* \* \*

1           §2198.13. Annual fee; use of proceeds

2                     There shall be an annual license fee to be set by the ~~department~~ **board** not to  
3 exceed one thousand dollars for any license issued in accordance with the provisions  
4 of this Part. Monies collected for annual fees shall be used for the investigation and  
5 enforcement of the provisions of this Part.

6           **§2198.14. Powers and duties of the board**

7                     **A. In the administration of this Part, the board shall have all of the**  
8 **authority, powers, protections, and immunities conferred upon it by the**  
9 **Louisiana Medical Practice Act. In addition, the board shall have authority to:**

10                    **(1) Adopt rules and regulations in accordance with the Administrative**  
11 **Procedure Act for the purpose of administering the provisions of this Part and**  
12 **administer and enforce all rules and regulations promulgated by the**  
13 **department pursuant to this Part until modified, superseded, or repealed by the**  
14 **board.**

15                    **(2) Approve, refuse to issue or renew, restrict, place on probation,**  
16 **suspend, or revoke a license.**

17                    **(3) Conduct administrative hearings on the refusal to issue, renew,**  
18 **suspend, or revoke a license.**

19                    **(4) Conduct inspections, surveys, and investigations of pain management**  
20 **clinics and their records to ensure compliance with this Part.**

21                    **(5) Have all other powers necessary and proper for the performance of**  
22 **its duties and the administration of this Part.**

23                    **(6) Issue a subpoena for any medical information, testimony, records,**  
24 **data, reports, or other documents or information relative to a pain management**  
25 **clinic or a facility operating as a pain management clinic without a license.**

26                    **B.(1) Nothing in this Part shall limit the authority of a health care**  
27 **provider, licensed by a licensing authority of this state, from engaging in the**  
28 **scope of practice conferred by such license under Louisiana law.**

29                    **(2) Nothing in this Part shall authorize an individual, other than a**

1 physician licensed by the board, to own or operate a pain management clinic  
2 nor prohibit the board from conducting an investigation or taking action  
3 against the owner or operator of a pain management clinic suspected of  
4 operating without a license issued by the board, except as set forth in R.S.  
5 40:2198.12(D).

6 §2198.15. Causes for nonissuance, suspension, and revocation; administrative  
7 costs and fines

8 A. In accordance with the Administrative Procedure Act, the board may  
9 refuse to issue or renew, restrict, suspend, or revoke a license held or applied  
10 for under this Part for any of the following causes, including but not limited to:

11 (1) Failing to meet the qualifications prescribed by this Part.

12 (2) Fraud, deceit, or perjury in obtaining a license issued under this Part.

13 (3) Action against the license of a physician operating a pain  
14 management clinic or working in association with a pain management clinic by  
15 the board for violation of the board's pain management rules or for any  
16 violation of R.S. 37:1285(A), which would render the physician ineligible under  
17 this Part to own, operate, be employed by or contracted to a pain management  
18 clinic.

19 (4) Owning or operating an unlicensed pain management clinic or  
20 performing any act which in any way assists a person to operate an unlicensed  
21 pain management clinic, or having a professional connection with or lending  
22 one's name to an illegal practitioner.

23 (5) Violation of any rules, regulations, or orders of the board, or any  
24 provisions of this Part.

25 B.(1) As part of a decision or order, the board may require a license  
26 holder or an applicant to pay all costs of the board proceedings, including but  
27 not limited to investigator, stenographer and attorney fees, witness fees and  
28 expenses, and the per diem and expenses of the members of the board's hearing  
29 panel and to pay a fine not to exceed five thousand dollars.

1           **(2) If for any reason the costs or fines imposed by the board under this**  
2           **Section are not paid within the time specified by the board, the board may**  
3           **recover costs and reasonable attorney fees associated with their collection.**

4           **(3) The board may authorize any member of the board or the board's**  
5           **executive director to sign an affidavit, petition, or other legal process, including**  
6           **but not limited to a petition in any court of competent jurisdiction for a money**  
7           **judgment for any and all costs and fines payable pursuant to a final decision or**  
8           **order of the board.**

9           **§2198.16. Adjudication; publication of action; judicial review; security**

10           **A. Proceedings for the refusal to issue or renew, restriction, probation,**  
11           **suspension, or revocation of a pain management clinic license shall be**  
12           **conducted by the board in accordance with its rules, regulations, and**  
13           **procedures and in compliance with the Administrative Procedure Act.**

14           **B. Any final decision or order issued by the board shall constitute a**  
15           **public record.**

16           **C. A party aggrieved by a final decision or order of the board resulting**  
17           **from an administrative adjudication may file a petition for judicial review,**  
18           **pursuant to R.S. 49:964.**

19           **D. Judicial review of a final decision or order of the board, or a**  
20           **preliminary, procedural, or intermediate decision, ruling, order, or action of the**  
21           **board shall be subject to and governed by the requirements and procedures set**  
22           **forth in R.S. 37:1285 (F) through (I).**

23           **E. A party seeking judicial review of a decision or order of the board**  
24           **shall furnish security in accordance with R.S. 37:1285.3.**

25           **§2198.17. Investigations and complaints; confidentiality of records**

26           **A. The board, through its duly authorized agents, shall inspect at regular**  
27           **intervals as may be deemed necessary by the board, and without prior notice,**  
28           **all pain management clinics subject to the provisions of this Part. The board**  
29           **shall also develop and facilitate coordination with other authorized local, state,**

1 and federal agencies making inspections of such facilities.

2 B. The board, through its duly authorized agents, shall investigate all  
3 complaints against any pain management clinic as defined in this Part. This  
4 shall include investigating complaints regarding a facility or clinic operating as  
5 a pain management clinic without a license.

6 C. Notwithstanding any law to the contrary, all information, records,  
7 accounts, books, photographs, copies, memoranda, or data concerning the  
8 fitness of any individual to receive or continue to hold a pain management clinic  
9 license, in the custody or control of the board, shall be deemed nonpublic,  
10 confidential, and privileged information and restricted to the exclusive use of  
11 the board, its members, officers, investigators, agents, and representatives in  
12 carrying out the provisions of this Part.

13 §2198.18. Injunctive and other relief

14 A. The board may cause to issue in any court of competent jurisdiction  
15 a writ of injunction enjoining any person from operating a pain management  
16 clinic that is not licensed under this Part. The injunction shall not be subject to  
17 being released upon bond. The trial of the proceeding by injunction shall be  
18 summary and by the judge without a jury. The failure of the board to seek an  
19 injunction shall not constitute a waiver nor confer upon any person violating  
20 this Part a right to engage in such conduct.

21 B. In the suit for an injunction, the board may demand of the defendant  
22 a penalty of not more than five thousand dollars, as well as reasonable attorney  
23 fees and court costs. The judgment for penalty, reasonable attorney fees, and  
24 costs may be rendered in the same judgment as the injunction.

25 C. In lieu of or in addition to the other remedies provided in this Section,  
26 the board may report violations of this Part to the attorney general, an  
27 appropriate district attorney, or other appropriate law enforcement officer, who  
28 may in his discretion cause appropriate criminal proceedings to be brought.

29 §2198.19. Criminal penalties

1           **A. It shall be unlawful for any person to own or operate a pain**  
2           **management clinic without a license issued by the board.**

3           **B. Whosoever owns or operates an unlicensed pain management clinic**  
4           **shall be fined not more than five hundred dollars for each offense or imprisoned**  
5           **for not more than five months, or both. Each day that a pain management clinic**  
6           **operates without a license shall constitute a separate offense.**

7           **§2198.20. Prohibition on limiting the practice of health care providers**

8           **Nothing in this Part is intended to limit the practice of health care**  
9           **providers who are licensed by the state of Louisiana and who are acting within**  
10          **their scope of practice under Louisiana law. The board shall be specifically**  
11          **prohibited from promulgating any rule, adopting any policy, or issuing any**  
12          **advisory opinion that limits a licensed health care provider's scope of practice**  
13          **contrary to that authorized by the legislature or applicable licensing board**  
14          **regulating the licensed health care provider, if authorized by law.**

15          Section 2. Upon the transfer accomplished by this Act, any pending or unfinished  
16          business of the Department of Health and Hospitals related to the licensure or regulation of  
17          any pain management clinic shall become the business of and be completed by the Louisiana  
18          State Board of Medical Examiners; provided, that any legal proceeding to which the  
19          Department of Health and Hospitals is or may be made a party as a result of the  
20          administration of this Part that is pending before any court on the effective date of transfer  
21          shall be continued in the name of the Department of Health and Hospitals.

22          Section 3. All documents, records or rights of action heretofore possessed, controlled  
23          or used by the Department of Health and Hospitals in the exercise of the functions hereby  
24          transferred shall be transferred to the Louisiana State Board of Medical Examiners.

25          Section 4. Any reference in this Part or in any related rules or documents to the  
26          Department of Health and Hospitals shall be deemed to refer to the Louisiana State Board  
27          of Medical Examiners, and any administrative rules and regulations promulgated by the  
28          Department of Health and Hospitals pursuant to this Part, which are in effect on the day  
29          preceding the effective date of this Act, shall be considered valid and shall continue in force



1 and effect and be enforceable by the Louisiana State Board of Medical Examiners until and  
 2 unless modified, superseded, or repealed by the Louisiana State Board of Medical  
 3 Examiners.

4 Section 5. This Act shall become effective on January 1, 2015.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Christopher D. Adams.

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#### DIGEST

Heitmeier (SB 619)

Present law provides for the regulation of pain management clinics by the Department of Health and Hospitals.

Proposed law transfers the regulation of pain management clinics from the department to the Louisiana State Board of Medical Examiners (the board).

Present law provides that certain pain management clinics operating on or before June 15, 2005, may be licensed by Department of Health and Hospitals if their license has not been suspended or revoked.

Present law provides the following qualifiers:

- (1) The pain management clinic shall not be owned, either in whole or in part, by or have any contractual relationship, whether through employment or by independent contract, with a physician who during the course of his practice has been denied the privilege of prescribing, dispensing, administering, supplying, or selling any controlled dangerous substance and who has, during the course of his practice had board action taken against his medical license as a result of dependency on drugs or alcohol.
- (2) The pain management clinic shall be operated by a medical director who shall be a physician.
- (3) The pain management clinic shall not be owned in whole or in part by a person who has been convicted of or who has pled guilty or nolo contendere to an offense that constitutes a felony.
- (4) The pain management clinic shall not be owned in whole or in part by a person who has been convicted of or who has pled guilty or nolo contendere to an offense that constitutes a misdemeanor, the facts of which relate to the distribution or illegal prescription of any narcotic.
- (5) The pain management clinic shall operate as an urgent care facility, offering primary or acute health services in addition to caring for those with chronic pain and shall have held itself out to the public as such.
- (6) The pain management clinic shall implement policies and procedures that are consistent with all pain management regulations issued by the State Board of Medical Examiners.
- (7) A pain management clinic which is exempted from the requirement of being owned and operated by a physician certified in the subspecialty of pain management may relocate and continue to be exempted from the requirement of being owned and

operated by a physician certified in the subspecialty of pain management if the new location is in the same parish in which the original clinic was located.

- (8) All pain management clinics shall submit to the department all relevant documentation proving valid operation before June 15, 2005, including but not limited to occupational licenses or certificates of operation issued by local authorities.

Proposed law amends the present law to provide the present law exemption for licensure shall not apply to a pain management clinic that is not licensed by or has not made an application to the Department of Health and Hospitals for licensure on or before August 1, 2014.

Proposed law provides the causes for nonissuance, restriction, probation, suspension, revocation of a pain management clinic license and provides for adjudication, publication of action, judicial review, and a posting of a required security.

Proposed law provides that nothing in the proposed law shall limit the authority of a health care provider, licensed by a licensing authority of this state, from engaging in the scope of practice conferred by such license under present law.

Proposed law provides nothing in proposed law shall authorize an individual, other than a physician licensed by the board, to own or operate a pain management clinic nor prohibit the board from conducting an investigation or taking action against the owner or operator of a pain management clinic suspected of operating without a license issued by the board, except as set forth in present law.

Proposed law provides injunctive relief powers to the Louisiana State Board of Medical Examiners.

Proposed law provides criminal penalties for any person owning or operating a pain management clinic without a license. Proposed penalties are a fine of not more than \$500 for each offense, or imprisonment for not more than five months, or both. Each day the pain management clinic operates without a license is a separate offense.

Proposed law provides nothing in the proposed law is intended to limit the practice of health care providers who are licensed by the state of Louisiana and who are acting within their scope of practice under present law. Further, the board shall be specifically prohibited from promulgating any rule, adopting any policy, or issuing any advisory opinion that limits a licensed health care provider's scope of practice contrary to that authorized by the legislature or applicable licensing board regulating the licensed health care provider, if authorized by present law.

Effective January 1, 2015.

(Amends R.S. 40:2198.12(A), (B)(1)(intro para) and (B)(1)(f), (D), and 2198.13; adds R.S. 40:2198.12(B)(1)(h) through (j), and 2198.14 through 2198.20)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Clarifies the proposed law does not limit that the authority of a health care provider, licensed by a licensing authority of this state, from engaging in the scope of practice conferred by such license under present law.
2. Clarifies who may own or operate a pain management clinic.

3. Prohibits LSBME from limiting the scope of practice of health care providers licensed by another licensing board when such scope of practice is provided to such health provider by Louisiana law.
4. Makes technical amendments.