

## **BILL ANALYSIS**

S.B. 911  
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Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The legitimate practice of pain management has a valuable role in the medical community. However, some pain management clinics engage in illegal drug diversion and cause great harm to their communities and to the state. There has been explosive growth in the market for controlled substances and part of the problem is the proliferation of "pill mills." One explanation for the proliferation in Texas is that Louisiana passed legislation requiring pain management clinics to be licensed, thus shutting down most of the illicit clinics.

S.B. 911 prohibits a pain management clinic from operating in Texas unless the clinic is certified. The bill requires the Texas Medical Board to adopt certain rules to ensure quality of patient care and personnel requirements for the clinic, including requirements for a physician who practices at a clinic.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

S.B. 911 amends the Occupations Code to establish a pain management clinic certification and to prohibit a clinic from operating in Texas unless the clinic is certified. The bill requires a physician who owns or operates such a clinic to apply for a certificate and requires a clinic to be owned and operated by a medical director who is a physician who practices in the state under an unrestricted license. The bill establishes that the certificate is not transferrable or assignable. The bill sets out procedures for the application for an issuance of a certificate. The bill establishes that a certificate expires on the second anniversary of the date it is issued and requires the board to grant a 180-day grace period from the expiration date in which to renew the certificate. The bill prohibits the owner or operator of a clinic for which a certificate has expired from continuing to operate the clinic until the certificate is renewed, establishes renewal procedures, and requirements for reapplication.

S.B. 911 prohibits the owner or operator of a clinic, an employee of the clinic, or a person with whom a clinic contracts for services from having been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply, or sell a controlled substance; held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance. The bill prohibits a clinic from being owned wholly or partly by a person who has been convicted of or pled nolo contendere to, or who has received deferred adjudication for an offense that constitutes a felony or an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance. The bill requires the owner or operator of a pain management clinic to be on-site at the clinic at least 33 percent of

the clinic's total number of operating hours and to review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic.

S.B. 911 establishes that a violation of the bill's provisions or a rule adopted under those provisions is grounds for disciplinary action against a certified pain management clinic or an owner or operator of a certified clinic. The bill provides for the enforcement of a violation of the bill's provisions in the same manner as any other violation of licensing provisions regarding physicians.

S.B. 911 requires the Texas Medical Board to adopt rules necessary to implement provisions regarding regulation of pain management clinics, including rules to address the operation of the clinic; personnel requirements for the clinic, including requirements for a physician who practices at a clinic; standards to ensure quality of patient care; certificate application and renewal procedures and requirements; inspections and complaint investigations; and patient billing procedures. The bill exempts from the certification requirements a medical or dental school or an outpatient clinic associated with a medical or dental school; a hospital, including any outpatient facility or clinic of a hospital; a hospice established under state administrative code or defined by federal regulations; a facility maintained or operated by the state; a clinic maintained or operated by the federal government; a health organization certified by the board; or a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients.

S.B. 911 authorizes the board to inspect a pain management clinic, including the documents of a physician practicing at the clinic, as necessary to ensure compliance with the bill's provisions. The bill requires the board to investigate a complaint alleging a violation of the bill's provisions or a rule adopted under those provisions by a certified pain management clinic or a physician who owns or operates a certified clinic, in the same manner as other complaints under licensing provisions regarding physicians.

S.B. 911 defines "pain management clinic."

S.B. 911 requires the board to adopt the rules required by the bill's provisions not later than March 1, 2010. The bill requires a pain management clinic to obtain a certificate not later than September 1, 2010, and makes provisions requiring a certificate for the operation of such a clinic effective on that date.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.