

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 594

INTRODUCER: Senator Bean

SUBJECT: Nursing Homes and Related Health Care Facilities

DATE: March 15, 2013

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Stovall	HP	<u>Pre-meeting</u>
2.		BI	
3.		RC	
4.			
5.			
6.			

I. Summary:

SB 594 exempts certain clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-fault Law.

This bill substantially amends section 400.9905 of the Florida Statutes.

II. Present Situation:

Currently, clinics in the State of Florida must be licensed by the Agency for Health Care Administration (AHCA).¹ However, there are many exclusions from the definition of “clinic” and from the requirement to obtain a license from the AHCA.² Health care entities that are certified under 42 C.F.R. 485, subpart H, to provide physical therapy or speech pathology services along with entities that own,³ are owned by,⁴ or are under common ownership with,⁵ directly or indirectly, such health care entities, are included under these exceptions. Providers certified under 42 C.F.R. 485, subpart H include:

¹ s. 400.991, F.S.

² s. 400.9905(4)(a)-(n), F.S.

³ s. 400.9905(4)(b), F.S.

⁴ s. 400.9905(4)(c), F.S.

⁵ s. 400.9905(4)(d), F.S.

- **Clinics** where the medical services are furnished by a group of three or more physicians practicing medicine together and a physician is present during all hours of operation of the clinic to furnish medical services, as distinguished from purely administrative services;⁶
- **Rehabilitation agencies** that provide an integrated interdisciplinary rehabilitation program designed to upgrade the physical functioning of handicapped disabled individuals by bringing specialized rehabilitation staff together to perform as a team and provide at least physical therapy or speech-language pathology services;⁷ and
- **Public health agencies** established by a state or local government, the primary function of which is to maintain the health of the population served by performing environmental health services, preventive medical services, and in certain cases, therapeutic services.⁸

However, in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law health care entities excluded from the definition of a clinic under s. 400.9905, F.S., still must obtain a license as a clinic unless they are listed by s. 627.736(5)(h), F.S.⁹

Florida Motor Vehicle No-Fault Law

Under the state's no-fault law,¹⁰ owners or registrants of motor vehicles are required to purchase \$10,000 of personal injury protection (PIP) insurance and \$5,000 in death benefits which compensates persons injured in accidents regardless of fault.¹¹ Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.¹² This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.¹³ In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both PIP and property damage liability (PD) insurance.¹⁴ PIP coverage provides reimbursement for 80 percent of reasonable medical expenses if the individual receives initial services and care within 14 days after the motor vehicle accident in the manner prescribed,^{15,16,17} 60 percent of loss of income,¹⁸ and all expenses reasonably incurred in

⁶ 42 C.F.R. 485.703

⁷ Id.

⁸ Id.

⁹ *Exempted entities include:* an entity wholly owned by a physician licensed under ch. 458 or ch. 459, or by the physician and the spouse, parent, child, or sibling of the physician; an entity wholly owned by a dentist licensed under ch. 466, or by the dentist and the spouse, parent, child, or sibling of the dentist; an entity wholly owned by a chiropractic physician licensed under ch. 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician; a hospital or ambulatory surgical center licensed under ch. 395; an entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under ch. 395; and an entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

¹⁰ Sections 627.730-627.7405, F.S.

¹¹ Section 627.736(1), F.S.

¹² See s. 627.731, F.S.

¹³ Section 627.737, F.S.

¹⁴ See sections 324.022, F.S. and 627.733, F.S.

¹⁵ This benefit is limited to minimum of \$10,000 for emergency medical conditions (s. 627.736(1), F.S.) and \$2,500 for non-emergency medical conditions (s. 627.736(1)(a)4., F.S.).

¹⁶ Section 627.736(1)(a), F.S.

obtaining from others ordinary and necessary services which the insured would have performed,¹⁹ for bodily injury sustained in a motor vehicle accident, without regard to fault. The PD coverage must provide a \$10,000 minimum benefit. A \$5,000 death benefit is also provided.²⁰

Motor Vehicle Insurance Fraud in Florida

Between years 2007 and 2012, Florida experienced an increase in motor vehicle related insurance fraud. The number of staged motor vehicle accidents received by the Division of Insurance Fraud (division)²¹ nearly doubled from 776 in fiscal year 2008-2009²² to 1,416 in fiscal year 2010-2011.²³ The division also reported sizeable increases in the overall number of PIP fraud referrals, which have increased from 9,916 during fiscal year 2007-2008 to 13,452 in fiscal year 2010-2011.²⁴

Motor vehicle insurance fraud has been a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals received by the division during the three fiscal years beginning in 2002 and ending in 2005. That amount was easily exceeded by the over 5,500 PIP fraud referrals received by the division during fiscal year 2009-2010. Given this fact, the following description from the 2005 report is an accurate description of the situation in 2011-2012 regarding motor vehicle insurance fraud:

Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering...

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders.

¹⁷ See sub-subparagraphs 1-5 of s. 627.736(1)(a), F.S. for the specifics on how care may be obtained.

¹⁸ Section 627.736(1)(b), F.S.

¹⁹ Id.

²⁰ Section 627.736(1)(c), F.S.

²¹ The Division of Insurance Fraud is the law enforcement arm of the Department of Financial Services.

²² Florida Department of Financial Services Division of Insurance Fraud Statistical Report: Fiscal year 2008-2009.

²³ Florida Department of Financial Services Division of Insurance Fraud Annual Report: Fiscal year 2010-2011, pg. 30, found at: http://www.myfloridacfo.com/fraud/annual%20report/2010-2011_DIF_AnnualReport.pdf, last visited on Mar. 19, 2013.

²⁴ See the Office of the Insurance Consumer Advocate, *Report on Florida Motor Vehicle No-fault Insurance*, found at; <http://www.myfloridacfo.com/ica/docs/PIP%20Working%20Group%20Report%2012.14.2011.pdf>, last visited on Mar. 18, 2013.

Legislative Response

Responding to widespread PIP related insurance fraud and the rising cost of automobile insurance, the Insurance Consumer Advocate (ICA) formed the PIP Working Group in July of 2011, to assist in developing a policy paper that broadly reviewed and outlined the challenges regarding the rising fraud and abuse associated with Florida's No-Fault system.²⁵ The working group was comprised of various stakeholders who provided data, commentary and policy direction. In December 2011, the working group released a report which concluded that absent much needed changes to Florida's No-Fault system, Florida consumers will be left with fewer choices, higher rates or, they will choose to go uninsured.²⁶ In response to these issues and the working group's report, the 2012 Legislature passed CS/CS/HB 199 (CS/CS/SB 1860 by Senator Negron), which was signed into law on April 24, 2012.²⁷ The bill significantly changed to Florida's PIP insurance laws relating to:

- PIP medical benefits;
- PIP death benefits;
- The PIP medical fee schedule;
- Mandatory rate filings and data call;
- Attorney fees;
- Investigation and payment of claims; and,
- Prevention of PIP-related insurance fraud.²⁸

One element of the bill required that, in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, health care entities excluded from the definition of a clinic under s. 400.9905, F.S., still must obtain a license as a clinic unless they are listed by s. 627.736(5)(h), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., to exempt clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law²⁹ if they are certified before June 30, 2014 or if they are owned by an entity which owns other clinics certified before June 30, 2014.

Section 2 creates an effective date of July 1, 2013.

²⁵ Supra, n. 21, p. 1

²⁶ Supra, n. 21, p. 42

²⁷ 2012-197, L.O.F.

²⁸ For a full summary of the changes made by CS/CS/HB 119, please see the Banking and Insurance Committee's bill summary, found at: <http://www.flsenate.gov/Committees/billsummaries/2012/html/215>, last visited on Mar. 18, 2012

²⁹ ss. 627.730-627.7405, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 594 could have a positive fiscal impact on health care entities, which will be newly eligible to receive reimbursement under the Florida Motor Vehicle No-Fault Law without obtaining a license from the AHCA.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.