

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 709 Health Care Clinics
SPONSOR(S): Diaz
TIED BILLS: **IDEN./SIM. BILLS:** SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N	Poche	Shaw
2) Insurance & Banking Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

Prior to 2012, clinics, rehabilitation agencies, and public health agencies, certified by Medicare under 42 C.F.R. part 485, subpart H, providing physical therapy and speech-language pathology services under Personal Injury Protection (PIP) insurance coverage were exempt from a licensing requirement in the Health Care Clinic Act. In 2012, the PIP insurance and Florida Motor Vehicle No-Fault Law were significantly amended under House Bill 119. The bill, which was passed by the Legislature and signed by the Governor, removed the exemption and required entities certified by Medicare under 42 C.F.R. part 485, subpart H to be licensed as a clinic in order to be reimbursed under the law.

House Bill 709 replaces the exemption that existed prior to the 2012 law change for clinics, rehabilitation agencies, and public health agencies, certified by Medicare pursuant to 42 C.F.R. part 485, subpart H, that are providing physical therapy and speech-language pathology services from licensing requirements under the Health Care Clinic Act. The bill extends the exemption to facilities, also certified by Medicare under the applicable regulation, commonly owned by an entity that receives the original exemption before June 30, 2014.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Health Care Clinics

Health care clinics are regulated under part X of ch. 400, F.S., the Health Care Clinic Act (Act). This act was passed in 2003 to reduce fraud and abuse in the personal injury protection (PIP) insurance system. Florida's Motor Vehicle No-Fault Law¹ requires motor vehicle owners to maintain \$10,000 of PIP insurance. PIP benefits are available for certain express damages sustained in a motor vehicle accident, regardless of fault.

Pursuant to the Act, the Agency for Health Care Administration (AHCA) licenses entities that meet the definition of a "clinic"- an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.² The biennial health care clinic license fee is \$2,000.00.³

The statute creates a number of exemptions from the health care clinic licensure requirements, including, but not limited to:

- Entities licensed or registered by the state under chapter 395;⁴
- Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;⁵
- Orthotic or prosthetic clinical facilities that are a publicly traded corporation or that are wholly owned, directly or indirectly, by a publicly traded corporation;⁶ and
- Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number.⁷

An entity exempt from the licensing requirements of the Act may submit an Application for Certificate of Exemption from Licensure as a Health Care Clinic to AHCA.⁸ The certificate, however, is not required to be exempt from licensure.⁹

Applicants must provide proof of compliance with applicable rules and financial ability to operate. As an alternative to submitting certain detailed financial projections, an applicant may submit a surety bond, payable to AHCA, in the amount of \$500,000.00.¹⁰ A level two background screening is required of each applicant for clinic licensure, and certain criminal offenses bar licensure.¹¹ Each clinic must have a medical director or clinic director¹² who agrees in writing to accept legal responsibility pursuant to s. 400.9935, F.S., for the following activities on behalf of the clinic:

¹ Sections 627.730-627.7405, F.S., the Florida Motor Vehicle No-Fault Law, were repealed on October 1, 2007 pursuant to s. 19, ch. 2003-411 L.O.F. The No-Fault Law was revived and reenacted effective January 1, 2008 pursuant to ch. 2007-324 L.O.F.

² S. 400.9905(4), F.S.

³ Rule 59A-33.002(1)(a), F.A.C.

⁴ S. 400.9905(4)(a), F.S.

⁵ S. 400.9905(4)(h), F.S.

⁶ S. 400.9905(4)(l), F.S.

⁷ S. 400.9905(4)(n), F.S.

⁸ Rule 59A-33.006(1), F.A.C.; The Certificate of Exemption from Licensure as a Health Care Clinic carries a \$100 fee. Rule 59A-33.006(7), F.A.C.

⁹ Id.

¹⁰ Rule 59A-33.002(1)(d), F.A.C.

¹¹ Rule 59A-33.002(1)(e), F.A.C.

¹² Rule 59A-33.008, F.A.C., contains additional details regarding the role and responsibilities of the medical director or clinic director.

- Ensuring that all practitioners providing health care services or supplies to patients maintain a current, active, and unencumbered Florida license;
- Reviewing patient referral contracts or agreements made by the clinic;
- Ensuring that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided;
- Serving as the clinic records owner;
- Ensuring compliance with the recordkeeping, office surgery, and adverse incident reporting requirements of chapter 456, F.S., the respective practice acts, and rules adopted under the Health Care Clinic Act; and
- Conducting systematic reviews of clinic billings to ensure billings are not fraudulent or unlawful. If an unlawful charge is discovered, immediate corrective action must be taken.

AHCA may deny, revoke, or suspend a health care clinic license and impose administrative fines of up to \$5,000 per violation pursuant to s. 400.995, F.S.

As of March 2013, AHCA has issued 2,084 Health Care Clinic Licenses and 9,121 Certificates of Exemption.¹³ Rehabilitation agencies, clinics, and public health agencies providing outpatient physical therapy and speech-language pathology services certified under Medicare pursuant to 42 C.F.R. part 485, subpart H are exempted from licensure under the Act.¹⁴ AHCA reports 770 exempt rehabilitation agencies in the state, with nearly two thirds of those agencies located in the following counties:¹⁵

- Pinellas (82)
- Miami-Dade (68)
- Indian River (64)
- Broward (54)
- Palm Beach (52)
- Lee (44)
- Duval (38)
- Orange (37)
- Hillsborough (35)

2012 Changes to Florida Motor Vehicle No-Fault Law and Personal Injury Protection (PIP) Insurance

In 2012, House Bill 119, making significant changes to PIP law and the Florida Motor Vehicle No-Fault Law, was passed by the Legislature and approved by the Governor.¹⁶ The bill made certain changes to the Act:

- Required previously exempt entities to be licensed under the Act in order to receive reimbursement for services provided under PIP;¹⁷
- Provided exceptions to the licensing requirement for reimbursement for services provided under PIP; and
- Revised the definition of “clinic”, clarifying that a license is required for reimbursement under PIP, regardless of the location where services are actually provided.

In order to receive reimbursement under the Motor Vehicle No-Fault Law for providing reasonable medical, rehabilitative, and other appropriate services, House Bill 119 required clinics, rehabilitation agencies, and public health agencies providing outpatient physical therapy and speech-language

¹³ E-Mail correspondence from AHCA staff to Health Innovation subcommittee staff, March 11, 2013 (on file with Health Innovation subcommittee staff); staff also notes that there is no requirement that a Certificate of Exemption be updated or that a clinic advise AHCA when it goes out of business. Staff suspects that the number of Certificates of Exemption is inflated and may be much lower.

¹⁴ S. 400.9905(4)(a) through (d), F.S.

¹⁵ Agency for Health Care Administration, *2013 Bill Analysis & Economic Impact Statement- HB 709*, paged 1-2 (on file with Health Innovation subcommittee staff).

¹⁶ Ch. 2012-197, L.O.F.

¹⁷ S. 400.9905(4), F.S.

pathology services and certified under Medicare in 42 C.F.R. part 485, subpart H to be licensed under the Act. The entities retained their general exemption from licensure under the Act.

Effect of Proposed Changes

The bill removes the requirement that an entity providing services under the Motor Vehicle No-Fault Law be licensed under the Act for the following entities, which are exempted from general licensing requirements under the Act:

- A clinic, rehabilitation agency, or public health agency certified by Medicare as a provider of outpatient physical therapy services under 42 U.S.C. part 485, subpart H.
- A clinic, rehabilitation agency, or public health agency certified by Medicare as a provider of speech-language pathology services under 42 U.S.C. part 485, subpart H.

In order to provide services under No-Fault Law without being licensed under the Act, the specified entity must be exempted from licensing requirements by June 30, 2014.

The bill extends the exemption beyond June 30, 2014 to other entities, also certified by Medicare under 42 U.S.C. part 485, subpart H, owned by the single legal entity which owns the entity originally exempted from licensing requirements under the act prior to June 30, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 400.9905, F.S., relating to definitions.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities certified by Medicare under 42 C.F.R. part 485, subpart H will not have to pay the biennial license fee of \$2,000 in order to be reimbursed under the Florida Motor Vehicle No-Fault Law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration has appropriate rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES