SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2380

SPONSOR: Senator Cowin

SUBJECT: Health Care Clinics

DATE: March 2, 2004 REVISED: 3/09/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Wilson	HC	Fav/1 amendment
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill changes the date by which an application for initial licensure as a health care clinic must be filed from March 1, 2004, to July 1, 2004. It makes a conforming date change to the application requirement for a temporary license. Currently, entities which provide health care services to individuals and which tender charges for reimbursement for such services are defined as "clinics" under part XIII of chapter 400, F.S., ("Health Care Clinic Act") and, unless exempt, must apply to the Agency for Health Care Administration (AHCA or agency) to be licensed.

This bill substantially amends section 400.991 of the Florida Statutes.

II. Present Situation:

Health Care Clinic Licensure

The genesis of licensing health care clinics arose from a recommendation contained in a report issued by the Fifteenth Statewide Grand Jury in September 2000, that had examined motor vehicle personal injury protection (PIP) insurance fraud.[1] In its report, the Grand Jury recommended to the Legislature that "all medical facilities" be regulated and licensed in Florida due to PIP fraud being committed by unscrupulous medical providers within unlicensed clinics.[2] In response to the Grand Jury proposals, the 2001 Legislature enacted broad PIP anti-fraud legislation that included establishing the registration of health care clinics under the Department

[1] For a copy of the report issued in September 2000, go to: http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!OpenDocument

[2] The Grand Jury made seven legislative recommendations to help curtail PIP insurance fraud, along with similar recommendations to the Florida Bar, the insurance industry, and other professional groups.

of Health (DOH).[3] Due to the difficulty in discerning which health care facilities in the state rendered PIP medical services, the language referring to "clinics" in the legislation defined the term broadly to include businesses at which "health care services are provided to individuals and which tender charges for reimbursement for such services." The legislation exempted from the clinic definition certain entities currently licensed or registered by the state. These included abortion clinics, mental health facilities, hospitals, nursing homes and related facilities, optometry, pharmacy, dental, electrolysis, massage, and optical entities as well as certain practices wholly owned by licensed practitioners, and certain tax exempt entities.

The 2001 legislation required health care clinics to employ a licensed physician as medical director[4] or a specified health care practitioner as clinical director who was to be legally responsible for various clinic activities and procedures. Criminal penalties were mandated for unregistered clinics, while licensed health care practitioners who violated certain provisions could be disciplined according to their respective practice acts.

Prior to the beginning of the 2003 session, Senate President King appointed a Select Committee on Automobile Insurance/PIP Reform to examine problems with PIP insurance fraud. Officials with DOH testified before the Select Committee that 3,100 clinics had registered with their agency and paid a fee of $155 for a two year registration period pursuant to the 2001 legislation. However, these officials stated that clinic regulation needed to be "tightened" because their department lacked the requisite expertise, investigative staff, and enforcement authority to adequately regulate health care clinics.[5] In response to these concerns as well as other PIP anti-fraud related matters, the Legislature enacted comprehensive PIP legislation during 2003 Special Session A.[6] That legislation created part XIII, chapter 400, F.S., the "Health Care Clinic Act," (Act) and transferred health care clinic regulation from the DOH to the AHCA to strengthen clinic accountability by requiring clinics to meet specified financial and other conditions. It authorized AHCA to conduct clinic inspections, required criminal background screenings of clinic applicants who have a 5 percent or more ownership interest in the clinic, and provided for civil and criminal penalties.

Specified entities defined as "clinics"[7] under the Act were required to register with AHCA, pay a license application fee of $2,000 to obtain a biennial license, and submit their application by March 1, 2004. The Act prohibited clinic applicants who have committed specified crimes within the past 5 years from obtaining a clinic license or working as a licensed medical provider, medical director, or clinical director. It required clinics to allow AHCA complete access to premises and records; authorized the agency to impose administrative fines or seek corrective action from clinic owners or directors under specified circumstances; and required magnetic

[3] Chapters 2001-271 and 2001-163, L.O.F. (s. 456.0375, F.S.)
[4] Physicians licensed under chapters 458 (medical physician); 459 (osteopathic physician); 460 (chiropractic physician); and, 461 (podiatric physician), F.S.
[5] Final Report to Senate President King from the Select Committee, March 3, 2003.
[6] Ch. 2003-411, L.O.F.
[7] Under the Act, clinics were defined in a manner very similar to the definitions and exceptions contained in the 2001 legislation under s. 456.0375, F.S., with exceptions for entities that own, are owned or are under common ownership with specified licensed or registered entities. Exceptions to clinic licensure were made for community and university clinics, facilities affiliated with medical schools, and community care facilities. The definition of "medical director" remained substantially the same under the Act.

resonance imaging (MRI) clinics to become accredited by specified national organizations within 1 year of licensure.

The Act authorized AHCA to promulgate rules and to institute injunctive proceedings and other agency actions against clinics and health care providers under specified circumstances. It required that providers who are aware of the operation of an unlicensed clinic, but fail to report such clinic, be reported to an appropriate licensing board. The bill appropriated $2.5 million from the Health Care Trust Fund for 51 full-time equivalent (FTE) positions for AHCA to implement the clinic licensure program.[8]

According to discussions with representatives with AHCA, the agency has gone to great lengths to notify clinics which were formerly registered with DOH about the new licensing requirements under the Act. As of March 3, 2004, it has received 2,280 clinic license applications and approximately 2,050 requests for exemption from licensure for a total of 4,330 submissions. According to these representatives, AHCA has no authority to refund any license application fee pursuant to s. 440.9925(3), F.S.

Since the enactment of the Health Care Clinic Act, concerns have been raised that the definition of a "clinic" may be too broad and encompass entities that are otherwise regulated by the state or federal government, or do not provide direct medical services to persons injured as a result of a motor vehicle accident. Such entities include the following (also included are estimates by AHCA of the number of these entities in parentheses):

- End-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U (260);
- Birth centers licensed under s. 383.30, F.S. (22);
- Clinical laboratories licensed under part I of chapter 483, F.S. (10,681);
- Charitable clinics exempt from federal taxation under 501 (C) (4) (22); and,
- Entities owned or operated by the federal or state government, including agencies, subdivisions, or municipalities (162) thereof.

Concerns have also been raised by entities that provide multiple therapy services (physical, occupational, and speech) and participate in the federal certification process to become Medicare-certified outpatient rehabilitation facilities (ORFs) or comprehensive outpatient rehabilitation facilities (CORFs). These entities assert that they should also be exempt from clinic licensure since they are regulated by the federal government.[9] Another concern these entities have is that they usually have one director who is trained in one of the therapy specialties. However, under the Act, these entities must hire a physician as a medical director as opposed to employing a "therapy" director. These entities are precluded from employing one of their therapy colleagues as a clinic director since a clinic director can only supervise and be responsible for therapies that are *within* his or her scope of practice.

[8] AHCA currently has hired 31 FTEs under the clinic program as of March 5, 2004. The 51 FTEs will consist of : 26 field inspectors/examiners; 15 license/compliance reviewers; 7 attorneys; 2 background screeners; and, 1 information technician.
[9] Such entities are certified under 42CFR, Part 485, Subpart B or H and Medicare has designated AHCA to implement the certification process for such programs. According to AHCA, there are currently 508 CORFS and ORFS.

III. Effect of Proposed Changes:

Section 1. This bill amends s. 400.991, F.S., to change the date by which an application for initial licensure as a health care clinic must be filed from March 1, 2004, to July 1, 2004. It makes a conforming date change to the application requirement for a temporary license. Currently, specified entities under part XIII of chapter 400, F.S., ("Health Care Clinic Act") must apply to the Agency for Health Care Administration (AHCA) to be licensed as a health care clinic and pay a $2,000 license application fee.

Section 2. Takes effect upon becoming a law.

See *Related Issues*, below, for further discussion of the effect of this change.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Entities meeting the definition of a clinic would be provided an extended period to submit an application for licensure and to pay the $2,000 licensure fee. However, since the March 1 deadline under the current law has passed, most entities are likely to have already paid this fee. Nothing in the current law provides for refunds of any licensure fees. If subsequent legislation exempts certain entities from licensure, entitlement to any refund would be dependent on such legislation.

C. Government Sector Impact:

Under the provisions of the bill, AHCA will have more time to prepare for administering clinic license and exemption applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

By extending the date from March 1, 2004 to July 1, 2004, for submitting an application to AHCA for licensure, an entity meeting the definition of a clinic would be legally permitted to operate without being licensed until the later date, after the bill takes effect. But, the legal status of such clinics between March 1, 2004, and the effective date of the bill (upon becoming law) are uncertain. It is not clear whether an entity meeting the definition of a clinic that is not licensed during this interim period would be in violation of the law or could be legally denied payment by insurers or other payors for services rendered during this period. This issue may be addressed by providing that the bill applies retroactively to March 1, 2003.

VIII. Amendments:

1 by Health Aging, and Long-Term Care Committee:
Amends the effective date to provide that the bill will take effect upon becoming a law and will apply retroactively to March 1, 2004.