

Bill No. CS for SB 2448

Amendment No. \_\_\_\_ Barcode 692032

CHAMBER ACTION

Senate

House

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04/28/2004 12:09 PM

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11 Senator Cowin moved the following amendment:

13 **Senate Amendment (with title amendment)**

14 On page 37, between lines 2 and 3,

16 insert:

17 Section 25. Subsections (3) and (4) of section  
18 400.9905, Florida Statutes, are amended, and subsections (5),  
19 (6), and (7) are added to that section, to read:

20 400.9905 Definitions.--

21 (3) "Clinic" means an entity at which health care  
22 services are provided to individuals and which tenders charges  
23 for reimbursement for such services, including a mobile clinic  
24 and a portable equipment provider. For purposes of this part,  
25 the term does not include and the licensure requirements of  
26 this part do not apply to:

27 (a) Entities licensed or registered by the state under  
28 chapter 395; or entities licensed or registered by the state  
29 and providing only health care services within the scope of  
30 services authorized under their respective licenses granted  
31 under ss. 383.30-383.335, chapter 390, chapter 394, ~~chapter~~

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1 ~~395~~, chapter 397, this chapter except part XIII, chapter 463,  
2 chapter 465, chapter 466, chapter 478, part I of chapter 483  
3 ~~480~~, chapter 484, or chapter 651, end-stage renal disease  
4 providers authorized under 42 C.F.R. part 405, subpart U, or  
5 providers certified under 42 C.F.R. part 485, subpart B or  
6 subpart H, or any entity that provides neonatal or pediatric  
7 hospital-based healthcare services by licensed practitioners  
8 solely within a hospital licensed under chapter 395.

9 (b) Entities that own, directly or indirectly,  
10 entities licensed or registered by the state pursuant to  
11 chapter 395; or entities that own, directly or indirectly,  
12 entities licensed or registered by the state and providing  
13 only health care services within the scope of services  
14 authorized pursuant to their respective licenses granted under  
15 ss. 383.30-383.335, chapter 390, chapter 394, ~~chapter 395,~~  
16 chapter 397, this chapter except part XIII, chapter 463,  
17 chapter 465, chapter 466, chapter 478, part I of chapter 483  
18 ~~480~~, chapter 484, or chapter 651, end-stage renal disease  
19 providers authorized under 42 C.F.R. part 405, subpart U, or  
20 providers certified under 42 C.F.R. part 485, subpart B or  
21 subpart H, or any entity that provides neonatal or pediatric  
22 hospital-based healthcare services by licensed practitioners  
23 solely within a hospital licensed under chapter 395.

24 (c) Entities that are owned, directly or indirectly,  
25 by an entity licensed or registered by the state pursuant to  
26 chapter 395; or entities that are owned, directly or  
27 indirectly, by an entity licensed or registered by the state  
28 and providing only health care services within the scope of  
29 services authorized pursuant to their respective licenses  
30 granted under ss. 383.30-383.335, chapter 390, chapter 394,  
31 ~~chapter 395,~~ chapter 397, this chapter except part XIII,

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1 chapter 463, chapter 465, chapter 466, chapter 478, part I of  
2 chapter 483 ~~480~~, chapter 484, or chapter 651, end-stage renal  
3 disease providers authorized under 42 C.F.R. part 405, subpart  
4 U, or providers certified under 42 C.F.R. part 485, subpart B  
5 or subpart H, or any entity that provides neonatal or  
6 pediatric hospital-based healthcare services by licensed  
7 practitioners solely within a hospital licensed under chapter  
8 395.

9 (d) Entities that are under common ownership, directly  
10 or indirectly, with an entity licensed or registered by the  
11 state pursuant to chapter 395; or entities that are under  
12 common ownership, directly or indirectly, with an entity  
13 licensed or registered by the state and providing only health  
14 care services within the scope of services authorized pursuant  
15 to its respective license granted under ss. 383.30-383.335,  
16 chapter 390, chapter 394, ~~chapter 395~~, chapter 397, this  
17 chapter ~~except part XIII~~, chapter 463, chapter 465, chapter  
18 466, chapter 478, part I of chapter 483 ~~480~~, chapter 484, or  
19 chapter 651, end-stage renal disease providers authorized  
20 under 42 C.F.R. part 405, subpart U, or providers certified  
21 under 42 C.F.R. part 485, subpart B or subpart H, or any  
22 entity that provides neonatal or pediatric hospital-based  
23 services by licensed practitioners solely within a hospital  
24 licensed under chapter 395.

25 (e) An entity that is exempt from federal taxation  
26 under 26 U.S.C. s. 501(c)(3) or s. 501(c)(4), and any  
27 community college or university clinic, and any entity owned  
28 or operated by federal or state government, including  
29 agencies, subdivisions, or municipalities thereof.

30 (f) A sole proprietorship, group practice,  
31 partnership, or corporation that provides health care services

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1 by physicians covered by s. 627.419, that is directly  
2 supervised by one or more of such physicians, and that is  
3 wholly owned by one or more of those physicians or by a  
4 physician and the spouse, parent, child, or sibling of that  
5 physician.

6 ~~(g)(f)~~ A sole proprietorship, group practice,  
7 partnership, or corporation that provides health care services  
8 by licensed health care practitioners under chapter 457,  
9 chapter 458, chapter 459, chapter 460, chapter 461, chapter  
10 462, chapter 463, chapter 466, chapter 467, chapter 480,  
11 chapter 484, chapter 486, chapter 490, chapter 491, or part I,  
12 part III, part X, part XIII, or part XIV of chapter 468, or s.  
13 464.012, which are wholly owned by one or more ~~a~~ licensed  
14 health care practitioners ~~practitioner~~, or the licensed health  
15 care practitioners set forth in this paragraph ~~practitioner~~  
16 and the spouse, parent, ~~or~~ child, or sibling of a licensed  
17 health care practitioner, so long as one of the owners who is  
18 a licensed health care practitioner is supervising the  
19 services performed therein and is legally responsible for the  
20 entity's compliance with all federal and state laws. However,  
21 a health care practitioner may not supervise services beyond  
22 the scope of the practitioner's license, except that, for the  
23 purposes of this part, a clinic owned by a licensee in s.  
24 456.053(3)(b) that provides only services authorized pursuant  
25 to s. 456.053(3)(b) may be supervised by a licensee specified  
26 in s. 456.053(3)(b).

27 ~~(h)(g)~~ Clinical facilities affiliated with an  
28 accredited medical school at which training is provided for  
29 medical students, residents, or fellows.

30 (i) Entities that provide only oncology or radiation  
31 therapy services by physicians licensed under chapter 458 or

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1 459.

2           (4) "Medical director" means a physician who is  
 3 employed or under contract with a clinic and who maintains a  
 4 full and unencumbered physician license in accordance with  
 5 chapter 458, chapter 459, chapter 460, or chapter 461.  
 6 However, if the clinic does not provide services pursuant to  
 7 the respective physician practice acts listed in this  
 8 subsection, it is limited to providing health care services  
 9 pursuant to chapter 457, chapter 484, chapter 486, chapter  
 10 490, or chapter 491 or part I, part III, part X, part XIII, or  
 11 part XIV of chapter 468, the clinic may appoint a  
 12 Florida-licensed health care practitioner who does not provide  
 13 services pursuant to the respective physician practice acts  
 14 listed in this subsection licensed under that chapter to serve  
 15 as a clinic director who is responsible for the clinic's  
 16 activities. A health care practitioner may not serve as the  
 17 clinic director if the services provided at the clinic are  
 18 beyond the scope of that practitioner's license, except that a  
 19 licensee specified in s. 456.053(3)(b) that provides only  
 20 services authorized pursuant to s. 456.053(3)(b) may serve as  
 21 clinic director of an entity providing services as specified  
 22 in s. 456.053(3)(b).

23           (5) "Mobile clinic" means a movable or detached  
 24 self-contained health care unit within or from which direct  
 25 health care services are provided to individuals and that  
 26 otherwise meets the definition of a clinic in subsection (3).

27           (6) "Portable equipment provider" means an entity that  
 28 contracts with or employs persons to provide portable  
 29 equipment to multiple locations performing treatment or  
 30 diagnostic testing of individuals, that bills third-party  
 31 payors for those services, and that otherwise meets the

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1 definition of a clinic in subsection (3).

2       (7) "Chief financial officer" means an individual who  
 3 has at least a minimum of a bachelor's degree from an  
 4 accredited university in accounting, finance, or a related  
 5 field and is the person responsible for the preparation of the  
 6 clinic billing.

7       Section 26. The creation of paragraph 400.9905(3)(i),  
 8 Florida Statutes, by this act is intended to clarify the  
 9 legislative intent of this provision as it existed at the time  
 10 the provision initially took effect as section 456.0375(1)(b),  
 11 Florida Statutes, and paragraph 400.9905(3)(i), Florida  
 12 Statutes, as created by this act, shall operate retroactively  
 13 to October 1, 2001. Nothing in this section shall be construed  
 14 as amending, modifying, limiting, or otherwise affecting in  
 15 any way the legislative intent, scope, terms, prohibition, or  
 16 requirements of section 456.053, Florida Statutes.

17       Section 27. Subsections (1), (2), and (3) and  
 18 paragraphs (a) and (b) of subsection (7) of section 400.991,  
 19 Florida Statutes, are amended to read:

20       400.991 License requirements; background screenings;  
 21 prohibitions.--

22       (1)(a) Each clinic, as defined in s. 400.9905, must be  
 23 licensed and shall at all times maintain a valid license with  
 24 the agency. Each clinic location shall be licensed separately  
 25 regardless of whether the clinic is operated under the same  
 26 business name or management as another clinic.

27       (b) Each mobile clinic must obtain a separate health  
 28 care clinic license and clinics must provide to the agency, at  
 29 least quarterly, its ~~their~~ projected street location ~~locations~~  
 30 to enable the agency to locate and inspect such clinic  
 31 clinics. A portable equipment provider must obtain a health

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1 care clinic license for a single administrative office and is  
2 not required to submit quarterly projected street locations.

3 (2) The initial clinic license application shall be  
4 filed with the agency by all clinics, as defined in s.  
5 400.9905, on or before ~~July~~ March 1, 2004. A clinic license  
6 must be renewed biennially.

7 (3) Applicants that submit an application on or before  
8 July ~~March~~ 1, 2004, which meets all requirements for initial  
9 licensure as specified in this section shall receive a  
10 temporary license until the completion of an initial  
11 inspection verifying that the applicant meets all requirements  
12 in rules authorized by s. 400.9925. However, a clinic engaged  
13 in magnetic resonance imaging services may not receive a  
14 temporary license unless it presents evidence satisfactory to  
15 the agency that such clinic is making a good faith effort and  
16 substantial progress in seeking accreditation required under  
17 s. 400.9935.

18 (7) Each applicant for licensure shall comply with the  
19 following requirements:

20 (a) As used in this subsection, the term "applicant"  
21 means individuals owning or controlling, directly or  
22 indirectly, 5 percent or more of an interest in a clinic; the  
23 medical or clinic director, or a similarly titled person who  
24 is responsible for the day-to-day operation of the licensed  
25 clinic; the financial officer or similarly titled individual  
26 who is responsible for the financial operation of the clinic;  
27 and licensed health care practitioners ~~medical providers~~ at  
28 the clinic.

29 (b) Upon receipt of a completed, signed, and dated  
30 application, the agency shall require background screening of  
31 the applicant, in accordance with the level 2 standards for

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1 screening set forth in chapter 435. Proof of compliance with  
2 the level 2 background screening requirements of chapter 435  
3 which has been submitted within the previous 5 years in  
4 compliance with any other health care licensure requirements  
5 of this state is acceptable in fulfillment of this paragraph.  
6 Applicants who own less than 10 percent of a health care  
7 clinic are not required to submit fingerprints under this  
8 section.

9 Section 28. Subsections (1), (9), and (11) of section  
10 400.9935, Florida Statutes, are amended to read:

11 400.9935 Clinic responsibilities.--

12 (1) Each clinic shall appoint a medical director or  
13 clinic director who shall agree in writing to accept legal  
14 responsibility for the following activities on behalf of the  
15 clinic. The medical director or the clinic director shall:

16 (a) Have signs identifying the medical director or  
17 clinic director posted in a conspicuous location within the  
18 clinic readily visible to all patients.

19 (b) Ensure that all practitioners providing health  
20 care services or supplies to patients maintain a current  
21 active and unencumbered Florida license.

22 (c) Review any patient referral contracts or  
23 agreements executed by the clinic.

24 (d) Ensure that all health care practitioners at the  
25 clinic have active appropriate certification or licensure for  
26 the level of care being provided.

27 (e) Serve as the clinic records owner as defined in s.  
28 456.057.

29 (f) Ensure compliance with the recordkeeping, office  
30 surgery, and adverse incident reporting requirements of  
31 chapter 456, the respective practice acts, and rules adopted



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1 under this part and part II of chapter 408.

2 (g) Conduct systematic reviews of clinic billings to  
3 ensure that the billings are not fraudulent or unlawful. Upon  
4 discovery of an unlawful charge, the medical director or  
5 clinic director shall take immediate corrective action. If the  
6 clinic performs only the technical component of magnetic  
7 resonance imaging, static radiographs, computed tomography, or  
8 positron emission tomography, and provides the professional  
9 interpretation of such services, in a fixed facility that is  
10 accredited by the Joint Commission on Accreditation of  
11 Healthcare Organizations or the Accreditation Association for  
12 Ambulatory Health Care, and the American College of Radiology;  
13 and if, in the preceding quarter, the percentage of scans  
14 performed by that clinic which was billed to all personal  
15 injury protection insurance carriers was less than 15 percent,  
16 the chief financial officer of the clinic may, in a written  
17 acknowledgement provided to the agency, assume the  
18 responsibility for the conduct of the systematic reviews of  
19 clinic billings to ensure that the billings are not fraudulent  
20 or unlawful.

21 (9) Any person or entity providing health care  
22 services which is not a clinic, as defined under s. 400.9905,  
23 may voluntarily apply for a certificate of exemption from  
24 licensure under its exempt status with the agency on a form  
25 that sets forth its name or names and addresses, a statement  
26 of the reasons why it cannot be defined as a clinic, and other  
27 information deemed necessary by the agency. An exemption is  
28 not transferable. The agency may charge an applicant for a  
29 certificate of exemption \$100 or the actual cost, whichever is  
30 less, for processing the certificate.

31 (11)(a) Each clinic engaged in magnetic resonance

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1 imaging services must be accredited by the Joint Commission on  
2 Accreditation of Healthcare Organizations, the American  
3 College of Radiology, or the Accreditation Association for  
4 Ambulatory Health Care, within 1 year after licensure.  
5 However, a clinic may request a single, 6-month extension if  
6 it provides evidence to the agency establishing that, for good  
7 cause shown, such clinic can not be accredited within 1 year  
8 after licensure, and that such accreditation will be completed  
9 within the 6-month extension. After obtaining accreditation as  
10 required by this subsection, each such clinic must maintain  
11 accreditation as a condition of renewal of its license.

12 (b) The agency may deny ~~disallow~~ the application or  
13 revoke the license of any entity formed for the purpose of  
14 avoiding compliance with the accreditation provisions of this  
15 subsection and whose principals were previously principals of  
16 an entity that was unable to meet the accreditation  
17 requirements within the specified timeframes. The agency may  
18 adopt rules as to the accreditation of magnetic resonance  
19 imaging clinics.

20 Section 29. Subsections (1) and (3) of section  
21 400.995, Florida Statutes, are amended, and subsection (10) is  
22 added to said section, to read:

23 400.995 Agency administrative penalties.--

24 (1) The agency may deny the application for a license  
25 renewal, revoke or suspend the license, and impose  
26 administrative fin ~~penalties against clinics~~ of up to \$5,000  
27 per violation for violations of the requirements of this part  
28 or rules of the agency. In determining if a penalty is to be  
29 imposed and in fixing the amount of the fine, the agency shall  
30 consider the following factors:

31 (a) The gravity of the violation, including the

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1 probability that death or serious physical or emotional harm  
2 to a patient will result or has resulted, the severity of the  
3 action or potential harm, and the extent to which the  
4 provisions of the applicable laws or rules were violated.

5 (b) Actions taken by the owner, medical director, or  
6 clinic director to correct violations.

7 (c) Any previous violations.

8 (d) The financial benefit to the clinic of committing  
9 or continuing the violation.

10 (3) Any action taken to correct a violation shall be  
11 documented in writing by the owner, medical director, or  
12 clinic director of the clinic and verified through followup  
13 visits by agency personnel. The agency may impose a fine and,  
14 in the case of an owner-operated clinic, revoke or deny a  
15 clinic's license when a clinic medical director or clinic  
16 director ~~knowingly fraudulently~~ misrepresents actions taken to  
17 correct a violation.

18 (10) If the agency issues a notice of intent to deny a  
19 license application after a temporary license has been issued  
20 pursuant to s. 400.991(3), the temporary license shall expire  
21 on the date of the notice and may not be extended during any  
22 proceeding for administrative or judicial review pursuant to  
23 chapter 120.

24 Section 30. The agency shall refund 90 percent of the  
25 license application fee to applicants that submitted their  
26 health care clinic licensure fees and applications but were  
27 subsequently exempted from licensure by this act.

28 Section 31. Any person or entity defined as a clinic  
29 under s. 400.9905, Florida Statutes, shall not be in violation  
30 of part XIII of chapter 400, Florida Statutes, due to failure  
31 to apply for a clinic license by March 1, 2004, as previously

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1 required by s. 400.991, Florida Statutes. Payment to any such  
 2 person or entity by an insurer or other person liable for  
 3 payment to such person or entity may not be denied on the  
 4 grounds that the person or entity failed to apply for or  
 5 obtain a clinic license before March 1, 2004.

6  
 7 (Redesignate subsequent sections.)

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 9

10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 4, line 23, after the first semicolon,  
 13  
 14 insert:

15 amending s. 400.9905, F.S.; revising the  
 16 definitions of "clinic" and "medical director"  
 17 and defining "chief financial officer," "mobile  
 18 clinic," and "portable equipment provider" for  
 19 purposes of the Health Care Clinic Act;  
 20 providing that certain entities providing  
 21 oncology or radiation therapy services are  
 22 exempt from the licensure requirements of part  
 23 XIII of ch. 400, F.S.; providing legislative  
 24 intent with respect to such exemption;  
 25 providing for retroactive application; amending  
 26 s. 400.991, F.S.; requiring each mobile clinic  
 27 to obtain a health care clinic license;  
 28 requiring a portable equipment provider to  
 29 obtain a health care clinic license for a  
 30 single office and exempting such a provider  
 31 from submitting certain information to the

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1 Agency for Health Care Administration; revising  
2 the date by which an initial application for a  
3 health care clinic license must be filed with  
4 the agency; revising the definition of  
5 "applicant"; amending s. 400.9935, F.S.;  
6 assigning responsibilities for ensuring  
7 billing; providing that an exemption from  
8 licensure is not transferable; providing that  
9 the agency may charge a fee of applicants for  
10 certificates of exemption; providing that the  
11 agency may deny an application or revoke a  
12 license under certain circumstances; amending  
13 s. 400.995, F.S.; providing that the agency may  
14 deny, revoke, or suspend specified licenses and  
15 impose fines for certain violations; providing  
16 that a temporary license expires after a notice  
17 of intent to deny an application is issued by  
18 the agency; providing that persons or entities  
19 made exempt under the act and which have paid  
20 the clinic licensure fee to the agency are  
21 entitled to a partial refund from the agency;  
22 providing that certain persons or entities are  
23 not in violation of part XIII of ch. 400, F.S.,  
24 due to failure to apply for a clinic license by  
25 a specified date; providing that certain  
26 payments may not be denied to such persons or  
27 entities for failure to apply for or obtain a  
28 clinic license before a specified date;

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