

1 A bill to be entitled
2 An act relating to health care; providing
3 legislative findings and intent; amending s.
4 456.072, F.S., relating to grounds for
5 discipline, penalties, and enforcement
6 applicable to health care practitioners;
7 providing that a practitioner's failure to
8 disclose his or her training in health care
9 advertisements and in professional
10 relationships with patients constitutes grounds
11 for disciplinary action; providing exceptions;
12 providing penalties; specifying that a
13 reference to the section constitutes a general
14 reference under the doctrine of incorporation
15 by reference; amending s. 409.907, F.S.;
16 requiring the agency to develop a uniform
17 application process for Medicaid providers who
18 serve recipients through Medicaid waiver
19 programs; providing criteria; amending s.
20 468.352, F.S.; revising and providing
21 definitions applicable to the regulation of
22 respiratory therapy; amending s. 468.355, F.S.;
23 revising provisions relating to respiratory
24 therapy licensure and testing requirements;
25 amending s. 468.368, F.S.; revising exemptions
26 from respiratory therapy licensure
27 requirements; repealing s. 468.356, F.S.,
28 relating to the approval of educational
29 programs; repealing s. 468.357, F.S., relating
30 to licensure by examination; amending s.
31 400.9905, F.S.; revising the definitions of

1 "clinic" and "medical director" and defining
2 "mobile clinic," "portable equipment provider,"
3 and "chief financial officer," for purposes of
4 the Health Care Clinic Act; providing that
5 certain entities providing oncology or
6 radiation therapy services are exempt from the
7 licensure requirements of part XIII of ch. 400,
8 F.S.; providing legislative intent with respect
9 to such exemption; providing for retroactive
10 application; amending s. 400.991, F.S.;
11 requiring each mobile clinic to obtain a health
12 care clinic license; requiring a portable
13 equipment provider to obtain a health care
14 clinic license for a single office and
15 exempting such a provider from submitting
16 certain information to the Agency for Health
17 Care Administration; revising the date by which
18 an initial application for a health care clinic
19 license must be filed with the agency; revising
20 the definition of "applicant"; amending s.
21 400.9935, F.S.; providing that an exemption
22 from licensure is not transferable; providing
23 that the agency may charge a fee of applicants
24 for certificates of exemption; providing that
25 the agency may deny an application or revoke a
26 license under certain circumstances; amending
27 s. 400.995, F.S.; providing that the agency may
28 deny, revoke, or suspend specified licenses and
29 impose fines for certain violations; providing
30 that a temporary license expires after a notice
31 of intent to deny an application is issued by

1 the agency; providing that persons or entities
2 made exempt under the act and which have paid
3 the clinic licensure fee to the agency are
4 entitled to a partial refund from the agency;
5 providing that certain persons or entities are
6 not in violation of part XIII of ch. 400, F.S.,
7 due to failure to apply for a clinic license by
8 a specified date; providing that certain
9 payments may not be denied to such persons or
10 entities for failure to apply for or obtain a
11 clinic license before a specified date;
12 assigning responsibilities for ensuring
13 billing; amending s. 395.1027, F.S.; requiring
14 a hospital or other facility licensed under ch.
15 395, F.S., to release patient information to a
16 regional poison control center under specified
17 circumstances; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. The Legislature finds that there exists a
22 compelling state interest in patients being informed of the
23 credentials of the health care practitioners who treat them
24 and in the public being protected from misleading health care
25 advertising. The Legislature further finds that the areas of
26 health care practice licensure can be extremely confusing for
27 patients and that health care practitioners can easily mislead
28 patients into believing that the practitioner is better
29 qualified than other health care practitioners simply by
30 creating a sham practice designation. Therefore, the
31 Legislature has determined that the most direct and effective

1 manner in which to protect patients from this identifiable
2 harm is to ensure that patients and the public be informed of
3 the training of health care practitioners and intends by this
4 act to require the provision of such information.

5 Section 2. Section 456.072, Florida Statutes, is
6 amended to read:

7 456.072 Grounds for discipline; penalties;
8 enforcement.--

9 (1) The following acts shall constitute grounds for
10 which the disciplinary actions specified in subsection (2) may
11 be taken:

12 (a) Making misleading, deceptive, or fraudulent
13 representations in or related to the practice of the
14 licensee's profession.

15 (b) Intentionally violating any rule adopted by the
16 board or the department, as appropriate.

17 (c) Being convicted or found guilty of, or entering a
18 plea of guilty or nolo contendere to, regardless of
19 adjudication, a crime in any jurisdiction which relates to the
20 practice of, or the ability to practice, a licensee's
21 profession.

22 (d) Using a Class III or a Class IV laser device or
23 product, as defined by federal regulations, without having
24 complied with the rules adopted pursuant to s. 501.122(2)
25 governing the registration of such devices.

26 (e) Failing to comply with the educational course
27 requirements for human immunodeficiency virus and acquired
28 immune deficiency syndrome.

29 (f) Having a license or the authority to practice any
30 regulated profession revoked, suspended, or otherwise acted
31 against, including the denial of licensure, by the licensing

1 authority of any jurisdiction, including its agencies or
2 subdivisions, for a violation that would constitute a
3 violation under Florida law. The licensing authority's
4 acceptance of a relinquishment of licensure, stipulation,
5 consent order, or other settlement, offered in response to or
6 in anticipation of the filing of charges against the license,
7 shall be construed as action against the license.

8 (g) Having been found liable in a civil proceeding for
9 knowingly filing a false report or complaint with the
10 department against another licensee.

11 (h) Attempting to obtain, obtaining, or renewing a
12 license to practice a profession by bribery, by fraudulent
13 misrepresentation, or through an error of the department or
14 the board.

15 (i) Except as provided in s. 465.016, failing to
16 report to the department any person who the licensee knows is
17 in violation of this chapter, the chapter regulating the
18 alleged violator, or the rules of the department or the board.

19 (j) Aiding, assisting, procuring, employing, or
20 advising any unlicensed person or entity to practice a
21 profession contrary to this chapter, the chapter regulating
22 the profession, or the rules of the department or the board.

23 (k) Failing to perform any statutory or legal
24 obligation placed upon a licensee. For purposes of this
25 section, failing to repay a student loan issued or guaranteed
26 by the state or the Federal Government in accordance with the
27 terms of the loan or failing to comply with service
28 scholarship obligations shall be considered a failure to
29 perform a statutory or legal obligation, and the minimum
30 disciplinary action imposed shall be a suspension of the
31 license until new payment terms are agreed upon or the

1 scholarship obligation is resumed, followed by probation for
2 the duration of the student loan or remaining scholarship
3 obligation period, and a fine equal to 10 percent of the
4 defaulted loan amount. Fines collected shall be deposited into
5 the Medical Quality Assurance Trust Fund.

6 (l) Making or filing a report which the licensee knows
7 to be false, intentionally or negligently failing to file a
8 report or record required by state or federal law, or
9 willfully impeding or obstructing another person to do so.

10 Such reports or records shall include only those that are
11 signed in the capacity of a licensee.

12 (m) Making deceptive, untrue, or fraudulent
13 representations in or related to the practice of a profession
14 or employing a trick or scheme in or related to the practice
15 of a profession.

16 (n) Exercising influence on the patient or client for
17 the purpose of financial gain of the licensee or a third
18 party.

19 (o) Practicing or offering to practice beyond the
20 scope permitted by law or accepting and performing
21 professional responsibilities the licensee knows, or has
22 reason to know, the licensee is not competent to perform.

23 (p) Delegating or contracting for the performance of
24 professional responsibilities by a person when the licensee
25 delegating or contracting for performance of such
26 responsibilities knows, or has reason to know, such person is
27 not qualified by training, experience, and authorization when
28 required to perform them.

29 (q) Violating a lawful order of the department or the
30 board, or failing to comply with a lawfully issued subpoena of
31 the department.

1 (r) Improperly interfering with an investigation or
2 inspection authorized by statute, or with any disciplinary
3 proceeding.

4 (s) Failing to comply with the educational course
5 requirements for domestic violence.

6 (t) In any advertisement for health care services, and
7 during the first in-person patient encounter, failing to
8 disclose the type of license under which the practitioner is
9 operating. This paragraph does not apply to a practitioner
10 while the practitioner is providing services in a facility
11 licensed under chapter 394, chapter 395, or chapter 400.

12 (u)~~(t)~~ Failing to comply with the requirements of ss.
13 381.026 and 381.0261 to provide patients with information
14 about their patient rights and how to file a patient
15 complaint.

16 (v)~~(u)~~ Engaging or attempting to engage in sexual
17 misconduct as defined and prohibited in s. 456.063(1).

18 (w)~~(v)~~ Failing to comply with the requirements for
19 profiling and credentialing, including, but not limited to,
20 failing to provide initial information, failing to timely
21 provide updated information, or making misleading, untrue,
22 deceptive, or fraudulent representations on a profile,
23 credentialing, or initial or renewal licensure application.

24 (x)~~(w)~~ Failing to report to the board, or the
25 department if there is no board, in writing within 30 days
26 after the licensee has been convicted or found guilty of, or
27 entered a plea of nolo contendere to, regardless of
28 adjudication, a crime in any jurisdiction. Convictions,
29 findings, adjudications, and pleas entered into prior to the
30 enactment of this paragraph must be reported in writing to the
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1 board, or department if there is no board, on or before
2 October 1, 1999.

3 (y)~~(x)~~ Using information about people involved in
4 motor vehicle accidents which has been derived from accident
5 reports made by law enforcement officers or persons involved
6 in accidents pursuant to s. 316.066, or using information
7 published in a newspaper or other news publication or through
8 a radio or television broadcast that has used information
9 gained from such reports, for the purposes of commercial or
10 any other solicitation whatsoever of the people involved in
11 such accidents.

12 (z)~~(y)~~ Being unable to practice with reasonable skill
13 and safety to patients by reason of illness or use of alcohol,
14 drugs, narcotics, chemicals, or any other type of material or
15 as a result of any mental or physical condition. In enforcing
16 this paragraph, the department shall have, upon a finding of
17 the secretary or the secretary's designee that probable cause
18 exists to believe that the licensee is unable to practice
19 because of the reasons stated in this paragraph, the authority
20 to issue an order to compel a licensee to submit to a mental
21 or physical examination by physicians designated by the
22 department. If the licensee refuses to comply with such order,
23 the department's order directing such examination may be
24 enforced by filing a petition for enforcement in the circuit
25 court where the licensee resides or does business. The
26 department shall be entitled to the summary procedure provided
27 in s. 51.011. A licensee or certificateholder affected under
28 this paragraph shall at reasonable intervals be afforded an
29 opportunity to demonstrate that he or she can resume the
30 competent practice of his or her profession with reasonable
31 skill and safety to patients.

1 ~~(aa)(z)~~ Testing positive for any drug, as defined in
2 s. 112.0455, on any confirmed preemployment or
3 employer-ordered drug screening when the practitioner does not
4 have a lawful prescription and legitimate medical reason for
5 using such drug.

6 ~~(bb)(aa)~~ Performing or attempting to perform health
7 care services on the wrong patient, a wrong-site procedure, a
8 wrong procedure, or an unauthorized procedure or a procedure
9 that is medically unnecessary or otherwise unrelated to the
10 patient's diagnosis or medical condition. For the purposes of
11 this paragraph, performing or attempting to perform health
12 care services includes the preparation of the patient.

13 ~~(cc)(bb)~~ Leaving a foreign body in a patient, such as
14 a sponge, clamp, forceps, surgical needle, or other
15 paraphernalia commonly used in surgical, examination, or other
16 diagnostic procedures. For the purposes of this paragraph, it
17 shall be legally presumed that retention of a foreign body is
18 not in the best interest of the patient and is not within the
19 standard of care of the profession, regardless of the intent
20 of the professional.

21 ~~(dd)(cc)~~ Violating any provision of this chapter, the
22 applicable practice act, or any rules adopted pursuant
23 thereto.

24 ~~(ee)(dd)~~ With respect to making a personal injury
25 protection claim as required by s. 627.736, intentionally
26 submitting a claim, statement, or bill that has been "upcoded"
27 as defined in s. 627.732.

28 ~~(ff)(ee)~~ With respect to making a personal injury
29 protection claim as required by s. 627.736, intentionally
30 submitting a claim, statement, or bill for payment of services
31 that were not rendered.

1 (2) When the board, or the department when there is no
2 board, finds any person guilty of the grounds set forth in
3 subsection (1) or of any grounds set forth in the applicable
4 practice act, including conduct constituting a substantial
5 violation of subsection (1) or a violation of the applicable
6 practice act which occurred prior to obtaining a license, it
7 may enter an order imposing one or more of the following
8 penalties:

9 (a) Refusal to certify, or to certify with
10 restrictions, an application for a license.

11 (b) Suspension or permanent revocation of a license.

12 (c) Restriction of practice or license, including, but
13 not limited to, restricting the licensee from practicing in
14 certain settings, restricting the licensee to work only under
15 designated conditions or in certain settings, restricting the
16 licensee from performing or providing designated clinical and
17 administrative services, restricting the licensee from
18 practicing more than a designated number of hours, or any
19 other restriction found to be necessary for the protection of
20 the public health, safety, and welfare.

21 (d) Imposition of an administrative fine not to exceed
22 \$10,000 for each count or separate offense. If the violation
23 is for fraud or making a false or fraudulent representation,
24 the board, or the department if there is no board, must impose
25 a fine of \$10,000 per count or offense.

26 (e) Issuance of a reprimand or letter of concern.

27 (f) Placement of the licensee on probation for a
28 period of time and subject to such conditions as the board, or
29 the department when there is no board, may specify. Those
30 conditions may include, but are not limited to, requiring the
31 licensee to undergo treatment, attend continuing education

1 | courses, submit to be reexamined, work under the supervision
2 | of another licensee, or satisfy any terms which are reasonably
3 | tailored to the violations found.

4 | (g) Corrective action.

5 | (h) Imposition of an administrative fine in accordance
6 | with s. 381.0261 for violations regarding patient rights.

7 | (i) Refund of fees billed and collected from the
8 | patient or a third party on behalf of the patient.

9 | (j) Requirement that the practitioner undergo remedial
10 | education.

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12 | In determining what action is appropriate, the board, or
13 | department when there is no board, must first consider what
14 | sanctions are necessary to protect the public or to compensate
15 | the patient. Only after those sanctions have been imposed may
16 | the disciplining authority consider and include in the order
17 | requirements designed to rehabilitate the practitioner. All
18 | costs associated with compliance with orders issued under this
19 | subsection are the obligation of the practitioner.

20 | (3)(a) Notwithstanding subsection (2), if the ground
21 | for disciplinary action is the first-time failure of the
22 | licensee to satisfy continuing education requirements
23 | established by the board, or by the department if there is no
24 | board, the board or department, as applicable, shall issue a
25 | citation in accordance with s. 456.077 and assess a fine, as
26 | determined by the board or department by rule. In addition,
27 | for each hour of continuing education not completed or
28 | completed late, the board or department, as applicable, may
29 | require the licensee to take 1 additional hour of continuing
30 | education for each hour not completed or completed late.

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1 (b) Notwithstanding subsection (2), if the ground for
2 disciplinary action is the first-time violation of a practice
3 act for unprofessional conduct, as used in ss. 464.018(1)(h),
4 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
5 harm to the patient occurred, the board or department, as
6 applicable, shall issue a citation in accordance with s.
7 456.077 and assess a penalty as determined by rule of the
8 board or department.

9 (4) In addition to any other discipline imposed
10 through final order, or citation, entered on or after July 1,
11 2001, pursuant to this section or discipline imposed through
12 final order, or citation, entered on or after July 1, 2001,
13 for a violation of any practice act, the board, or the
14 department when there is no board, shall assess costs related
15 to the investigation and prosecution of the case. Such costs
16 related to the investigation and prosecution include, but are
17 not limited to, salaries and benefits of personnel, costs
18 related to the time spent by the attorney and other personnel
19 working on the case, and any other expenses incurred by the
20 department for the case. The board, or the department when
21 there is no board, shall determine the amount of costs to be
22 assessed after its consideration of an affidavit of itemized
23 costs and any written objections thereto. In any case where
24 the board or the department imposes a fine or assessment and
25 the fine or assessment is not paid within a reasonable time,
26 such reasonable time to be prescribed in the rules of the
27 board, or the department when there is no board, or in the
28 order assessing such fines or costs, the department or the
29 Department of Legal Affairs may contract for the collection
30 of, or bring a civil action to recover, the fine or
31 assessment.

1 (5) In addition to, or in lieu of, any other remedy or
2 criminal prosecution, the department may file a proceeding in
3 the name of the state seeking issuance of an injunction or a
4 writ of mandamus against any person who violates any of the
5 provisions of this chapter, or any provision of law with
6 respect to professions regulated by the department, or any
7 board therein, or the rules adopted pursuant thereto.

8 (6) In the event the board, or the department when
9 there is no board, determines that revocation of a license is
10 the appropriate penalty, the revocation shall be permanent.
11 However, the board may establish by rule requirements for
12 reapplication by applicants whose licenses have been
13 permanently revoked. Such requirements may include, but shall
14 not be limited to, satisfying current requirements for an
15 initial license.

16 (7) The purpose of this section is to facilitate
17 uniform discipline for those actions made punishable under
18 this section and, to this end, a reference to this section
19 constitutes a general reference under the doctrine of
20 incorporation by reference.

21 Section 3. Subsection (12) is added to section
22 409.907, Florida Statutes, to read:

23 409.907 Medicaid provider agreements.--The agency may
24 make payments for medical assistance and related services
25 rendered to Medicaid recipients only to an individual or
26 entity who has a provider agreement in effect with the agency,
27 who is performing services or supplying goods in accordance
28 with federal, state, and local law, and who agrees that no
29 person shall, on the grounds of handicap, race, color, or
30 national origin, or for any other reason, be subjected to
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1 discrimination under any program or activity for which the
2 provider receives payment from the agency.

3 (12) The Agency for Health Care Administration shall
4 develop a uniform application process for approving providers
5 of medical assistance and related services rendered to
6 Medicaid recipients through the state's Medicaid waiver
7 programs. The process developed must eliminate the necessity
8 for Medicaid waiver providers to submit separate applications
9 to provide the same product or service for more than one
10 Medicaid waiver program. A Medicaid waiver provider
11 application that is approved by the agency may be considered
12 if that applicant also applies to become an approved provider
13 for an additional waiver program, if the product or service is
14 an allowable expense under that program.

15 Section 4. Section 468.352, Florida Statutes, is
16 amended to read:

17 (Substantial rewording of section. See
18 s. 468.352, F.S., for present text.)

19 468.352 Definitions.--As used in this part, the term:

20 (1) "Board" means the Board of Respiratory Care.

21 (2) "Certified respiratory therapist" means any person
22 licensed pursuant to this part who is certified by the
23 National Board for Respiratory Care or its successor; who is
24 employed to deliver respiratory care services, under the order
25 of a physician licensed pursuant to chapter 458 or chapter
26 459, in accordance with protocols established by a hospital or
27 other health care provider or the board; and who functions in
28 situations of unsupervised patient contact requiring
29 individual judgment.

30 (3) "Critical care" means care given to a patient in
31 any setting involving a life-threatening emergency.

1 (4) "Department" means the Department of Health.

2 (5) "Direct supervision" means practicing under the
3 direction of a licensed, registered, or certified respiratory
4 therapist who is physically on the premises and readily
5 available, as defined by the board.

6 (6) "Physician supervision" means supervision and
7 control by a physician licensed under chapter 458 or chapter
8 459 who assumes the legal liability for the services rendered
9 by the personnel employed in his or her office. Except in the
10 case of an emergency, physician supervision requires the easy
11 availability of the physician within the office or the
12 physical presence of the physician for consultation and
13 direction of the actions of the persons who deliver
14 respiratory care services.

15 (7) "Practice of respiratory care" or "respiratory
16 therapy" means the allied health specialty associated with the
17 cardiopulmonary system that is practiced under the orders of a
18 physician licensed under chapter 458 or chapter 459 and in
19 accordance with protocols, policies, and procedures
20 established by a hospital or other health care provider or the
21 board, including the assessment, diagnostic evaluation,
22 treatment, management, control, rehabilitation, education, and
23 care of patients in all care settings.

24 (8) "Registered respiratory therapist" means any
25 person licensed under this part who is registered by the
26 National Board for Respiratory Care or its successor, and who
27 is employed to deliver respiratory care services under the
28 order of a physician licensed under chapter 458 or chapter
29 459, in accordance with protocols established by a hospital or
30 other health care provider or the board, and who functions in

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1 situations of unsupervised patient contact requiring
2 individual judgment.

3 (9) "Respiratory care practitioner" means any person
4 licensed under this part who is employed to deliver
5 respiratory care services, under direct supervision, pursuant
6 to the order of a physician licensed under chapter 458 or
7 chapter 459.

8 (10) "Respiratory care services" includes:

9 (a) Evaluation and disease management.

10 (b) Diagnostic and therapeutic use of respiratory
11 equipment, devices, or medical gas.

12 (c) Administration of drugs, as duly ordered or
13 prescribed by a physician licensed under chapter 458 or
14 chapter 459 and in accordance with protocols, policies, and
15 procedures established by a hospital or other health care
16 provider or the board.

17 (d) Initiation, management, and maintenance of
18 equipment to assist and support ventilation and respiration.

19 (e) Diagnostic procedures, research, and therapeutic
20 treatment and procedures, including measurement of ventilatory
21 volumes, pressures, and flows; specimen collection and
22 analysis of blood for gas transport and acid/base
23 determinations; pulmonary-function testing; and other related
24 physiological monitoring of cardiopulmonary systems.

25 (f) Cardiopulmonary rehabilitation.

26 (g) Cardiopulmonary resuscitation, advanced cardiac
27 life support, neonatal resuscitation, and pediatric advanced
28 life support, or equivalent functions.

29 (h) Insertion and maintenance of artificial airways
30 and intravascular catheters.

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1 (i) Education of patients, families, the public, or
2 other health care providers, including disease process and
3 management programs and smoking prevention and cessation
4 programs.

5 (j) Initiation and management of hyperbaric oxygen.

6 Section 5. Section 468.355, Florida Statutes, is
7 amended to read:

8 (Substantial rewording of section. See

9 s. 468.355, F.S., for present text.)

10 468.355 Licensure requirements.--To be eligible for
11 licensure by the board, an applicant must be an active
12 "Certified Respiratory Therapist" or an active "Registered
13 Respiratory Therapist" as designated by the National Board for
14 Respiratory Care, or its successor.

15 Section 6. Section 468.368, Florida Statutes, is
16 amended to read:

17 (Substantial rewording of section. See

18 s. 468.368, F.S., for present text.)

19 468.368 Exemptions.--This part may not be construed to
20 prevent or restrict the practice, service, or activities of:

21 (1) Any person licensed in this state by any other law
22 from engaging in the profession or occupation for which he or
23 she is licensed.

24 (2) Any legally qualified person in the state or
25 another state or territory who is employed by the United
26 States Government or any agency thereof while such person is
27 discharging his or her official duties.

28 (3) A friend or family member who is providing
29 respiratory care services to an ill person and who does not
30 represent himself or herself to be a respiratory care
31 practitioner or respiratory therapist.

1 (4) An individual providing respiratory care services
2 in an emergency who does not represent himself or herself as a
3 respiratory care practitioner or respiratory therapist.

4 (5) Any individual employed to deliver, assemble, set
5 up, or test equipment for use in a home, upon the order of a
6 physician licensed pursuant to chapter 458 or chapter 459.
7 This subsection does not, however, authorize the practice of
8 respiratory care without a license.

9 (6) Any individual certified or registered as a
10 pulmonary function technologist who is credentialed by the
11 National Board for Respiratory Care for performing
12 cardiopulmonary diagnostic studies.

13 (7) Any student who is enrolled in an accredited
14 respiratory care program approved by the board, while
15 performing respiratory care as an integral part of a required
16 course.

17 (8) The delivery of incidental respiratory care to
18 noninstitutionalized persons by surrogate family members who
19 do not represent themselves as registered or certified
20 respiratory care therapists.

21 (9) Any individual credentialed by the Underseas
22 Hyperbaric Society in hyperbaric medicine or its equivalent as
23 determined by the board, while performing related duties. This
24 subsection does not, however, authorize the practice of
25 respiratory care without a license.

26 Section 7. Effective January 1, 2005, sections 468.356
27 and 468.357, Florida Statutes, are repealed.

28 Section 8. Subsections (3) and (4) of section
29 400.9905, Florida Statutes, are amended, and subsections (5)
30 and (6) are added to that section, to read: (attached)

31 400.9905 Definitions.--

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

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

20 (b) Entities that own, directly or indirectly,
21 entities licensed or registered by the state pursuant to
22 chapter 395; or entities that own, directly or indirectly,
23 entities licensed or registered by the state and providing
24 only health care services within the scope of services
25 authorized pursuant to their respective licenses granted under
26 ss. 383.30-383.335, chapter 390, chapter 394, ~~chapter 395~~,
27 chapter 397, this chapter except part XIII, chapter 463,
28 chapter 465, chapter 466, chapter 478, part I of chapter 483
29 480, chapter 484, or chapter 651, end-stage renal disease
30 providers authorized under 42 C.F.R. part 405, subpart U, or
31 providers certified under 42 C.F.R. part 485, subpart B or

1 subpart H, or any entity that provides neonatal or pediatric
 2 hospital-based healthcare services by licensed practitioners
 3 solely within a hospital licensed under chapter 395.

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

20 (d) Entities that are under common ownership, directly
 21 or indirectly, with an entity licensed or registered by the
 22 state pursuant to chapter 395; or entities that are under
 23 common ownership, directly or indirectly, with an entity
 24 licensed or registered by the state and providing only health
 25 care services within the scope of services authorized pursuant
 26 to its respective license granted under ss. 383.30-383.335,
 27 chapter 390, chapter 394, ~~chapter 395,~~ chapter 397, this
 28 chapter except part XIII, chapter 463, chapter 465, chapter
 29 466, chapter 478, part I of chapter ~~483 480~~, chapter 484, or
 30 chapter 651, end-stage renal disease providers authorized
 31 under 42 C.F.R. part 405, subpart U, or providers certified

1 under 42 C.F.R. part 485, subpart B or subpart H, or any
 2 entity that provides neonatal or pediatric hospital-based
 3 services by licensed practitioners solely within a hospital
 4 licensed under chapter 395.

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

10 (f) A sole proprietorship, group practice,
 11 partnership, or corporation that provides health care services
 12 by physicians covered by s. 627.419, that is directly
 13 supervised by one or more of such physicians, and that is
 14 wholly owned by one or more of those physicians or by a
 15 physician and the spouse, parent, child, or sibling of that
 16 physician.

17 ~~(g)(f)~~ A sole proprietorship, group practice,
 18 partnership, or corporation that provides health care services
 19 by licensed health care practitioners under chapter 457,
 20 chapter 458, chapter 459, chapter 460, chapter 461, chapter
 21 462, chapter 463, chapter 466, chapter 467, chapter 480,
 22 chapter 484, chapter 486, chapter 490, chapter 491, or part I,
 23 part III, part X, part XIII, or part XIV of chapter 468, or s.
 24 464.012, which are wholly owned by one or more ~~a~~ licensed
 25 health care practitioners ~~practitioner~~, or the licensed health
 26 care practitioners set forth in this paragraph ~~practitioner~~
 27 and the spouse, parent, ~~or~~ child, or sibling of a licensed
 28 health care practitioner, so long as one of the owners who is
 29 a licensed health care practitioner is supervising the
 30 services performed therein and is legally responsible for the
 31 entity's compliance with all federal and state laws. However,

1 a health care practitioner may not supervise services beyond
2 the scope of the practitioner's license, except that, for the
3 purposes of this part, a clinic owned by a licensee in s.
4 456.053(3)(b) that provides only services authorized pursuant
5 to s. 456.053(3)(b) may be supervised by a licensee specified
6 in s. 456.053(3)(b).

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

10 (i) Entities that provide only oncology or radiation
11 therapy services by physicians licensed under chapter 458 or
12 459.

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

1 clinic director of an entity providing services as specified
2 in s. 456.053(3)(b).

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

7 (6) "Portable equipment provider" means an entity that
8 contracts with or employs persons to provide portable
9 equipment to multiple locations performing treatment or
10 diagnostic testing of individuals, that bills third-party
11 payors for those services, and that otherwise meets the
12 definition of a clinic in subsection (3).

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

18 Section 9. The creation of paragraph 400.9905(3)(i),
19 Florida Statutes, by this act is intended to clarify the
20 legislative intent of this provision as it existed at the time
21 the provision initially took effect as section 456.0375(1)(b),
22 Florida Statutes, and paragraph 400.9905(3)(i), Florida
23 Statutes, as created by this act, shall operate retroactively
24 to October 1, 2001. Nothing in this section shall be construed
25 as amending, modifying, limiting, or otherwise affecting in
26 any way the legislative intent, scope, terms, prohibition, or
27 requirements of section 456.053, Florida Statutes.

28 Section 10. Subsections (1), (2), and (3) and
29 paragraphs (a) and (b) of subsection (7) of section 400.991,
30 Florida Statutes, are amended to read:
31

1 400.991 License requirements; background screenings;
2 prohibitions.--

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

8 (b) Each mobile clinic must obtain a separate health
9 care clinic license and clinics must provide to the agency, at
10 least quarterly, its their projected street location locations
11 to enable the agency to locate and inspect such clinic
12 clinics. A portable equipment provider must obtain a health
13 care clinic license for a single administrative office and is
14 not required to submit quarterly projected street locations.

15 (2) The initial clinic license application shall be
16 filed with the agency by all clinics, as defined in s.
17 400.9905, on or before July March 1, 2004. A clinic license
18 must be renewed biennially.

19 (3) Applicants that submit an application on or before
20 July March 1, 2004, which meets all requirements for initial
21 licensure as specified in this section shall receive a
22 temporary license until the completion of an initial
23 inspection verifying that the applicant meets all requirements
24 in rules authorized by s. 400.9925. However, a clinic engaged
25 in magnetic resonance imaging services may not receive a
26 temporary license unless it presents evidence satisfactory to
27 the agency that such clinic is making a good faith effort and
28 substantial progress in seeking accreditation required under
29 s. 400.9935.

30 (7) Each applicant for licensure shall comply with the
31 following requirements:

1 (a) As used in this subsection, the term "applicant"
 2 means individuals owning or controlling, directly or
 3 indirectly, 5 percent or more of an interest in a clinic; the
 4 medical or clinic director, or a similarly titled person who
 5 is responsible for the day-to-day operation of the licensed
 6 clinic; the financial officer or similarly titled individual
 7 who is responsible for the financial operation of the clinic;
 8 and licensed health care practitioners ~~medical providers~~ at
 9 the clinic.

10 (b) Upon receipt of a completed, signed, and dated
 11 application, the agency shall require background screening of
 12 the applicant, in accordance with the level 2 standards for
 13 screening set forth in chapter 435. Proof of compliance with
 14 the level 2 background screening requirements of chapter 435
 15 which has been submitted within the previous 5 years in
 16 compliance with any other health care licensure requirements
 17 of this state is acceptable in fulfillment of this paragraph.
 18 Applicants who own less than 10 percent of a health care
 19 clinic are not required to submit fingerprints under this
 20 section.

21 Section 11. Subsections (9) and (11) of section
 22 400.9935, Florida Statutes, are amended to read:

23 400.9935 Clinic responsibilities.--

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

1 certificate of exemption \$100 or the actual cost, whichever is
2 less, for processing the certificate.

3 (11)(a) Each clinic engaged in magnetic resonance
4 imaging services must be accredited by the Joint Commission on
5 Accreditation of Healthcare Organizations, the American
6 College of Radiology, or the Accreditation Association for
7 Ambulatory Health Care, within 1 year after licensure.

8 However, a clinic may request a single, 6-month extension if
9 it provides evidence to the agency establishing that, for good
10 cause shown, such clinic can not be accredited within 1 year
11 after licensure, and that such accreditation will be completed
12 within the 6-month extension. After obtaining accreditation as
13 required by this subsection, each such clinic must maintain
14 accreditation as a condition of renewal of its license.

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

23 Section 12. Subsections (1) and (3) of section
24 400.995, Florida Statutes, are amended, and subsection (10) is
25 added to said section, to read:

26 400.995 Agency administrative penalties.--

27 (1) The agency may deny the application for a license
28 renewal, revoke or suspend the license, and impose
29 administrative finer penalties against clinics of up to \$5,000
30 per violation for violations of the requirements of this part
31 or rules of the agency. In determining if a penalty is to be

1 imposed and in fixing the amount of the fine, the agency shall
2 consider the following factors:

3 (a) The gravity of the violation, including the
4 probability that death or serious physical or emotional harm
5 to a patient will result or has resulted, the severity of the
6 action or potential harm, and the extent to which the
7 provisions of the applicable laws or rules were violated.

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

10 (c) Any previous violations.

11 (d) The financial benefit to the clinic of committing
12 or continuing the violation.

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

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

27 Section 13. The agency shall refund 90 percent of the
28 license application fee to applicants that submitted their
29 health care clinic licensure fees and applications but were
30 subsequently exempted from licensure by this act.

31

1 Section 14. Any person or entity defined as a clinic
2 under s. 400.9905, Florida Statutes, shall not be in violation
3 of part XIII of chapter 400, Florida Statutes, due to failure
4 to apply for a clinic license by March 1, 2004, as previously
5 required by s. 400.991, Florida Statutes. Payment to any such
6 person or entity by an insurer or other person liable for
7 payment to such person or entity may not be denied on the
8 grounds that the person or entity failed to apply for or
9 obtain a clinic license before March 1, 2004.

10 Section 15. Subsections (1), (9), and (11) of section
11 400.9935, Florida Statutes, are amended to read:

12 400.9935 Clinic responsibilities.--

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

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

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

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

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

28 (e) Serve as the clinic records owner as defined in s.
29 456.057.

30 (f) Ensure compliance with the recordkeeping, office
31 surgery, and adverse incident reporting requirements of

1 chapter 456, the respective practice acts, and rules adopted
2 under this part.

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

22 Section 16. Present subsections (3) and (4) of section
23 395.1027, Florida Statutes, are redesignated as subsections
24 (4) and (5), respectively, and a new subsection (3) is added
25 to that section, to read:

26 395.1027 Regional poison control centers.--

27 (3) Upon request, a licensed facility shall release to
28 a regional poison control center any patient information that
29 is necessary for case management of poison cases.

30 Section 17. This act shall take effect July 1, 2004.

31