

By the Committee on Banking and Insurance

597-2067-06

1 A bill to be entitled
2 An act relating to health care clinics;
3 amending s. 400.9905, F.S.; redefining the term
4 "clinic" for purposes of the Health Care Clinic
5 Act to include certain additional providers;
6 excluding certain facilities owned by publicly
7 traded corporations; amending s. 400.991, F.S.;
8 requiring additional persons to be subject to
9 background screening; revising certain
10 requirements for applying for licensure as a
11 health care clinic; providing additional
12 grounds under which an applicant may be denied
13 licensure due to a finding of guilt for
14 committing a felony; amending s. 400.9935,
15 F.S.; revising the responsibilities of the
16 medical director and the clinical director;
17 requiring all persons providing health care
18 services to individuals in a clinic to comply
19 with the licensure laws and rules under which
20 that person is licensed; providing for a
21 certificate of exemption from licensure as a
22 clinic to expire within a specified period;
23 providing for renewal of the certificate of
24 exemption; revising the application procedures
25 for a certificate of exemption; providing
26 grounds for the denial, withdrawal, or
27 emergency suspension of a certificate of
28 exemption by the Agency for Health Care
29 Administration; providing that it is a
30 third-degree felony for an applicant to submit
31 fraudulent or material and misleading

1 information to the agency; requiring health
2 care clinics to display signs containing
3 certain information relating to insurance
4 fraud; authorizing compliance inspections by
5 the Division of Insurance Fraud; requiring
6 clinics to allow inspection access; providing
7 an effective date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Subsection (4) of section 400.9905, Florida
12 Statutes, is amended to read:

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400.9905 Definitions.--

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

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(a) Entities licensed or registered by the state under
21 chapter 395; or entities licensed or registered by the state
22 and providing only health care services within the scope of
23 services authorized under their respective licenses granted
24 under ss. 383.30-383.335, chapter 390, chapter 394, chapter
25 397, this chapter except part XIII, chapter 463, chapter 465,
26 chapter 466, chapter 478, part I of chapter 483, chapter 484,
27 or chapter 651; end-stage renal disease providers authorized
28 under 42 C.F.R. part 405, subpart U; or providers certified
29 under 42 C.F.R. part 485, subpart B or subpart H; or any
30 entity that provides neonatal or pediatric hospital-based

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1 health care services by licensed practitioners solely within a
2 hospital licensed under chapter 395.

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

18 (c) Entities that are owned, directly or indirectly,
19 by an entity licensed or registered by the state pursuant to
20 chapter 395; or entities that are owned, directly or
21 indirectly, by an entity licensed or registered by the state
22 and providing only health care services within the scope of
23 services authorized pursuant to their respective licenses
24 granted under ss. 383.30-383.335, chapter 390, chapter 394,
25 chapter 397, this chapter except part XIII, chapter 463,
26 chapter 465, chapter 466, chapter 478, part I of chapter 483,
27 chapter 484, or chapter 651; end-stage renal disease providers
28 authorized under 42 C.F.R. part 405, subpart U; or providers
29 certified under 42 C.F.R. part 485, subpart B or subpart H; or
30 any entity that provides neonatal or pediatric hospital-based
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1 health care services by licensed practitioners solely within a
2 hospital under chapter 395.

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

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

24 (f) A sole proprietorship, group practice,
25 partnership, ~~or~~ corporation, or other legal entity that
26 provides health care services by licensed health care
27 practitioners licensed under chapter 458, chapter 459, chapter
28 460, chapter 461, or chapter 466 ~~physicians covered by s.~~
29 ~~627.419~~, that is directly supervised by one or more of such
30 physicians, and that is wholly owned by one or more of those
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1 | physicians or by a physician and the spouse, parent, child, or
2 | sibling of that physician.

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

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

29 | (i) Entities that provide ~~only~~ oncology or radiation
30 | therapy services by physicians licensed under chapter 458 or
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1 chapter 459 which are owned by a corporation whose shares are
2 publicly traded on a registered stock exchange.

3 (j) Clinical facilities affiliated with a college of
4 chiropractic accredited by the Council on Chiropractic
5 Education at which training is provided for chiropractic
6 students.

7 (k) Clinical facilities that are wholly owned,
8 directly or indirectly, by a publicly traded corporation. As
9 used in this paragraph, a "publicly traded corporation" is a
10 corporation that issues securities traded on an exchange
11 registered with the United States Securities and Exchange
12 Commission as a national securities exchange.

13 Section 2. Subsections (5) and (7) of section 400.991,
14 Florida Statutes, are amended to read:

15 400.991 License requirements; background screenings;
16 prohibitions.--

17 (5)(a) The application shall contain information that
18 includes, but need not be limited to, information pertaining
19 to the name, residence and business address, phone number,
20 social security number, and license number of the medical or
21 clinic director, of the licensed medical providers employed or
22 under contract with the clinic, and of each person who,
23 directly or indirectly, owns or controls 5 percent or more of
24 an interest in the clinic, or general partners in limited
25 liability partnerships.

26 (b) Any person or entity that has a pecuniary interest
27 in a clinic who may or may not own stock or an equivalent
28 interest in the clinic, but nonetheless has control over or
29 the authority to approve, directly or indirectly, clinic
30 billing, policy, business activities, or personnel decisions,
31 including, but not limited to, contracted or employed

1 third-party billing persons or entities, managers, and
2 management companies, and persons and entities, directly or
3 indirectly, which lend, give, or gift money of any
4 denomination or any thing of value exceeding an aggregate of
5 \$5,000, for clinic use, with or without an expectation of a
6 return of the money or thing of value, and regardless of
7 profit motive, are subject to background screening
8 requirements under this part.

9 (c) The agency may adopt rules to administer this
10 subsection.

11 (7) Each applicant for licensure shall comply with the
12 following requirements:

13 (a) As used in this subsection, the term "applicant"
14 means individuals owning or controlling, directly or
15 indirectly, 5 percent or more of an interest in a clinic; the
16 medical or clinic director, or a similarly titled person who
17 is responsible for the day-to-day operation of the licensed
18 clinic; the financial officer or similarly titled individual
19 who is responsible for the financial operation of the clinic;
20 and licensed health care practitioners at the clinic.

21 (b) Upon receipt of a completed, signed, and dated
22 application, the agency shall require background screening of
23 the applicant, in accordance with the level 2 standards for
24 screening set forth in paragraph (d) chapter 435. Proof of
25 compliance with the level 2 background screening requirements
26 of paragraph (d) chapter 435 which has been submitted within
27 the previous 5 years in compliance with the any other health
28 care clinic licensure requirements of this part state is
29 acceptable in fulfillment of this paragraph. Applicants who
30 own less than 10 percent of a health care clinic are not
31 required to submit fingerprints under this section.

1 (c) Each applicant must submit to the agency, with the
2 application, a description and explanation of any exclusions,
3 permanent suspensions, or terminations of an applicant from
4 the Medicare or Medicaid programs. Proof of compliance with
5 the requirements for disclosure of ownership and control
6 interest under the Medicaid or Medicare programs may be
7 accepted in lieu of this submission. The description and
8 explanation may indicate whether such exclusions, suspensions,
9 or terminations were voluntary or not voluntary on the part of
10 the applicant.

11 (d) A license may not be granted to a clinic if the
12 applicant, or a person or entity identified in paragraph
13 (5)(b), has been found guilty of, regardless of adjudication,
14 or has entered a plea of nolo contendere or guilty to, any
15 offense prohibited under the level 2 standards for screening
16 set forth in chapter 435; any felony under chapter 400,
17 chapter 408, chapter 409, chapter 440, chapter 624, chapter
18 626, chapter 627, chapter 812, chapter 817, chapter 831,
19 chapter 837, chapter 838, chapter 895, chapter 896; or any
20 substantially comparable offense or crime of another state or
21 of the United States, if a felony in that jurisdiction, within
22 the past 10 years. Each person required to provide background
23 screening shall disclose to the agency any arrest for any
24 crime for which any court disposition other than dismissal has
25 been made within the past 10 years. Failure to provide such
26 information shall be considered a material omission in the
27 application process., or a violation of insurance fraud under
28 s. 817.234, within the past 5 years. If the applicant has been
29 convicted of an offense prohibited under the level 2 standards
30 or insurance fraud in any jurisdiction, the applicant must
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1 ~~show that his or her civil rights have been restored prior to~~
2 ~~submitting an application.~~

3 (e) The agency may deny or revoke licensure or
4 exemption if the applicant has falsely represented any
5 material fact or omitted any material fact from the
6 application which is permitted or required by this part.

7 (f) Each applicant that performs the technical
8 component of magnetic resonance imaging, static radiographs,
9 computer tomography, or positron emission tomography, and also
10 provides the professional components of such services through
11 an employee or independent contractor must provide to the
12 agency on a form provided by the agency, the name and address
13 of the clinic, the serial or operating number of each magnetic
14 resonance imaging, static radiograph, computer tomography, and
15 positron emission tomography machine, the name of the
16 manufacturer of the machine, and such other information as
17 required by the agency to identify the machine. The
18 information must be provided to the agency upon renewal of the
19 clinic's licensure and within 30 days after a clinic begins
20 using a machine for which it has not provided the information
21 to the agency.

22 Section 3. Section 400.9935, Florida Statutes, is
23 amended to read:

24 400.9935 Clinic responsibilities.--

25 (1) Each clinic shall appoint a medical director or
26 clinic director who shall agree in writing to accept legal
27 responsibility for the following activities on behalf of the
28 clinic. The medical director or the clinic director shall:

29 (a) Have signs identifying the medical director or
30 clinic director posted in a conspicuous location within the
31 clinic readily visible to all patients.

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

4 (c) Review any patient referral contracts or
5 agreements executed by the clinic.

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

9 (e) Ensure that all health care practitioners at the
10 clinic provide health care services in accordance with the
11 requirements of subsection (6).

12 ~~(f)(e)~~ Serve as the clinic records owner as defined in
13 s. 456.057.

14 ~~(g)(f)~~ Ensure compliance with the recordkeeping,
15 office surgery, and adverse incident reporting requirements of
16 chapter 456, the respective practice acts, and rules adopted
17 under this part.

18 ~~(h)(g)~~ Conduct systematic reviews of clinic billings
19 to ensure that the billings are not fraudulent or unlawful.
20 Upon discovery of an unlawful charge, the medical director or
21 clinic director shall take immediate corrective action. If the
22 clinic performs only the technical component of magnetic
23 resonance imaging, static radiographs, computed tomography, or
24 positron emission tomography, and provides the professional
25 interpretation of such services, in a fixed facility that is
26 accredited by the Joint Commission on Accreditation of
27 Healthcare Organizations or the Accreditation Association for
28 Ambulatory Health Care, and the American College of Radiology;
29 and if, in the preceding quarter, the percentage of scans
30 performed by that clinic which was billed to all personal
31 injury protection insurance carriers was less than 15 percent,

1 the chief financial officer of the clinic may, in a written
2 acknowledgment provided to the agency, assume the
3 responsibility for the conduct of the systematic reviews of
4 clinic billings to ensure that the billings are not fraudulent
5 or unlawful.

6 (i) Serve in that capacity for no more than a maximum
7 of five health care clinics that have a cumulative total of no
8 more than 200 employees and persons under contract with the
9 health care clinic at a given time. A medical or clinic
10 director may not supervise a health care clinic more than 200
11 miles away from any other health care clinic supervised by the
12 same medical or clinic director. The agency may allow for
13 waivers to the limitations of this paragraph upon a showing of
14 good cause and a determination by the agency that the medical
15 director will be able to adequately perform the requirements
16 of this subsection.

17 (2) Any business that becomes a clinic after
18 commencing operations must, within 5 days after becoming a
19 clinic, file a license application under this part and shall
20 be subject to all provisions of this part applicable to a
21 clinic.

22 (3) Any contract to serve as a medical director or a
23 clinic director entered into or renewed by a physician or a
24 licensed health care practitioner in violation of this part is
25 void as contrary to public policy. This subsection shall apply
26 to contracts entered into or renewed on or after March 1,
27 2004.

28 (4) All charges or reimbursement claims made by or on
29 behalf of a clinic that is required to be licensed under this
30 part, but that is not so licensed, or that is otherwise
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1 | operating in violation of this part, are unlawful charges, and
2 | therefore are noncompensable and unenforceable.

3 | (5) Any person establishing, operating, or managing an
4 | unlicensed clinic otherwise required to be licensed under this
5 | part, or any person who knowingly files a false or misleading
6 | license application or license renewal application, or false
7 | or misleading information related to such application or
8 | department rule, commits a felony of the third degree,
9 | punishable as provided in s. 775.082, s. 775.083, or s.
10 | 775.084.

11 | (6) All persons providing health care services to
12 | individuals must comply with the licensure laws and rules
13 | under which that person is licensed to provide such services
14 | or as otherwise provided by law.

15 | ~~(7)(6)~~ Any licensed health care provider who violates
16 | this part is subject to discipline in accordance with this
17 | chapter and his or her respective practice act.

18 | ~~(8)(7)~~ The agency may fine, or suspend or revoke the
19 | license of, any clinic licensed under this part for operating
20 | in violation of the requirements of this part or the rules
21 | adopted by the agency.

22 | ~~(9)(8)~~ The agency shall investigate allegations of
23 | noncompliance with this part and the rules adopted under this
24 | part.

25 | ~~(10)(9)~~ Any person or entity providing health care
26 | services which is not a clinic, as defined under s. 400.9905,
27 | may voluntarily apply for a certificate of exemption from
28 | licensure under its exempt status. Certificates of exemption
29 | shall expire in 2 years and may be renewed. ~~with the agency on~~
30 | ~~a form that sets forth its name or names and addresses, a~~
31 | ~~statement of the reasons why it cannot be defined as a clinic,~~

1 ~~and other information deemed necessary by the agency. An~~
2 ~~exemption is not transferable. The agency may charge an~~
3 ~~applicant for a certificate of exemption in an amount equal to~~
4 ~~\$100 or the actual cost of processing the certificate,~~
5 ~~whichever is less.~~

6 (a) The agency shall provide a form that requires the
7 name or names and addresses, a statement of the reasons why
8 the applicant is exempt from licensure as a health care
9 clinic, and other information deemed necessary by the agency.
10 The signature on an application for a certificate of exemption
11 must be notarized and signed by persons having knowledge of
12 the truth of its contents. An exemption is not transferable
13 and is valid only for the reasons, location, persons, and
14 entity set forth on the application form. A person or entity
15 claiming an exemption under this part or issued a current
16 certificate of exemption must be exempt from the licensing
17 provisions of this part at all times, or such claim or
18 certificate shall be invalid from the date that such person or
19 entity is not exempt.

20 (b) The agency shall charge an applicant for a
21 certificate of exemption a fee of \$100 to cover the cost of
22 processing the certificate or the actual cost of processing
23 the certificate, whichever is less.

24 (c) An application for the renewal of a certificate of
25 exemption must be submitted to the agency prior to the
26 expiration of the certificate of exemption. The agency may
27 investigate any applicant, person, or entity claiming an
28 exemption for purposes of determining compliance when a
29 certificate of exemption is sought. Authorized personnel of
30 the agency shall have access to the premises of any clinic for
31 the sole purpose of determining compliance with an exemption

1 under this part. The agency shall have access to all billings
2 and records indicated in s. 400.9915(2) and agency rules. The
3 agency may deny or withdraw a certificate of exemption when a
4 person or entity does not qualify under this part.

5 (d) A certificate of exemption is considered withdrawn
6 when the agency determines that an exempt status cannot be
7 confirmed. The provisions applicable to the unlicensed
8 operation of a health care clinic apply to any health care
9 provider that self-determines or claims an exemption or that
10 is issued a certificate of exemption if, in fact, such clinic
11 does not meet the exemption claimed.

12 (e) Any person or entity that submits an application
13 for a certificate of exemption which contains fraudulent or
14 material and misleading information commits a felony of the
15 third degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084.

17 (f) A response to a request in writing for additional
18 information or clarification must be filed with the agency no
19 later than 21 days after receipt of the request or the
20 application shall be denied.

21 (g) The agency shall grant or deny an application for
22 a certificate of exemption in accordance with s. 120.60(1).

23 (h) A person or entity that qualifies as a health care
24 clinic and has been denied a certificate of exemption must
25 file an initial application and pay the fee. A certificate of
26 exemption is valid only when issued and current.

27 (i) The agency shall issue an emergency order of
28 suspension of a certificate of exemption when the agency finds
29 that the applicant has provided false or misleading material
30 information or omitted any material fact from the application
31 for a certificate of exemption which is permitted or required

1 by this part, or has submitted false or misleading information
2 to the agency when self-determining an exempt status and
3 materially misleading the agency as to such status.

4 ~~(11)~~(10) The clinic shall display its license in a
5 conspicuous location within the clinic readily visible to all
6 patients.

7 ~~(12)~~(11)(a) Each clinic engaged in magnetic resonance
8 imaging services must be accredited by the Joint Commission on
9 Accreditation of Healthcare Organizations, the American
10 College of Radiology, or the Accreditation Association for
11 Ambulatory Health Care, within 1 year after licensure.

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

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

27 ~~(13)~~(12) The agency shall give full faith and credit
28 pertaining to any past variance and waiver granted to a
29 magnetic resonance imaging clinic from rule 64-2002, Florida
30 Administrative Code, by the Department of Health, until
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1 September 2004. After that date, such clinic must request a
2 variance and waiver from the agency under s. 120.542.

3 (14) The clinic shall display a sign in a conspicuous
4 location within the clinic readily visible to all patients
5 indicating that, pursuant to s. 626.9892, the Department of
6 Financial Services may pay rewards of up to \$25,000 to persons
7 providing information leading to the arrest and conviction of
8 persons committing crimes investigated by the Division of
9 Insurance Fraud arising from violations of s. 440.105, s.
10 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
11 employee of the Division of Insurance Fraud may make
12 unannounced inspections of a clinic licensed under this part
13 as necessary to determine whether the clinic is in compliance
14 with this subsection. A licensed clinic shall allow full and
15 complete access to the premises to such authorized employee of
16 the division who makes an inspection to determine compliance
17 with this subsection.

18 Section 4. This act shall take effect January 1, 2007.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2112
4 Requires clinics owned by certain health care providers to
5 limit services within the scope of their license in order to
6 be exempt from clinic licensure.
7 Exempts certain publicly traded corporations from clinic
8 licensure.
9 Requires additional parties to be subject to background
10 screening pursuant to clinic licensure.
11 Requires personnel in clinics to only render health care
12 services in accordance with medical licensure as a condition
13 of clinic licensure.
14 Reverts cost of certificate of exemption from clinic licensure
15 to \$100 and states that obtaining a certificate is optimal.
16 Adds requirements for clinics to submit to the Agency for
17 Health Care Administration serial numbers and other
18 information about MRI machines and other equipment.
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