HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 Health Care Clinic Act
SPONSOR(S): Kreegel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2354

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Health Innovation	7 Y, 0 N	Ciccone	Calamas
2) Healthcare Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 1115 provides a licensure exemption for clinical facilities that are wholly owned, directly or indirectly, by a publicly traded corporation. The bill provides a definition of a publicly traded corporation to mean a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill reduces the number of facilities that are subject to clinical licensure. Clinics that meet the definition of an exempted facility as defined in the bill would not be subject to state licensure requirements and associated fees.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1115 amends s. 400.9905, F.S., to add an exemption to the list of clinics that are defined in law for the purposes of licensure. The bill would exempt any clinical facility that is wholly owned, directly or indirectly, by a publicly traded corporation defined as a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange. The practical effect of this exemption would apply to clinics that fall within the revised definition of a publicly traded corporation and as such would be subject to the federal oversight contained within the Sarbanes-Oxley Law.

Federal Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002,[1] sponsored by US Senator Paul Sarbanes and US Representative Michael Oxley, represented one of the biggest changes to federal securities laws in recent history. The enactment of this law came as a result of the large corporate financial scandals involving Enron, WorldCom, Global Crossing and Arthur Anderson. The law essentially established that effective in 2006, all publicly-traded companies would be required to submit an annual report of the effectiveness of their internal accounting controls to the Security and Exchange Commission.

Provisions of the Sarbanes-Oxley Act detail criminal and civil penalties for noncompliance, certification of internal auditing and increased financial disclosure. All public U.S. companies and non-U.S. companies with a U.S. presence must comply with this law, the essence of which relates to corporate governance and financial disclosure. Federal oversight is primarily under the jurisdiction of the Public Company Accounting Oversight Board (PCAOB) under the Security and Exchange Commission (SEC), which can impose specified civil and criminal penalties for noncompliance. In addition to lawsuits, a corporate officer who does not comply with this law or submits an inaccurate certification is subject to a fine up to $1million and ten years in prison, even if done mistakenly. If an incorrect certification was submitted purposely, the fine can be up to $5 million and twenty years in prison.

State Health Care Clinic Licensure

Part XIII of ch. 400, F.S., contains the Health Care Clinic Act (act) (ss. 400.990-400.995, F.S.). The act was passed in 2003 to reduce fraud and abuse occurring in the Personal Injury Protection (PIP) insurance system. Under the act, the Agency for Health Care Administration (agency) licenses health care clinics, ensures that such clinics meet basic standards, and provides administrative oversight. Any entity that meets the definition of a "clinic" (an entity at which health care services are provided to individuals and charges for reimbursement for such services) must be licensed as a clinic.[2]

Every entity that meets the definition of a "clinic" must maintain a valid license with the AHCA at all times, and each clinic location must be licensed separately. A clinic license lasts for a 2-year period. The fees payable by each clinic to the AHCA for licensure cannot exceed $2,000, adjusted for changes in the Consumer Price Index for the previous 12 months. Each clinic must file in its application for licensure information regarding the identity of the owners, medical

[1] See www.Sarbanes-Oxleycompliance

[2] S. 400.9905(4), F.S.

providers employed, and the medical director and proof that the clinic is in compliance with applicable rules. The clinic must also present proof of financial ability to operate a clinic. A level 2 background screening pursuant to ch. 435, F.S., is required of each applicant for clinic licensure. A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense prohibited under the level 2 standards for screening or a violation of insurance fraud under s. 817.234, F.S., within the past 5 years.

Each clinic must have a medical director or clinic director who agrees in writing to accept legal responsibility pursuant to s. 400.9935, F.S., for the following activities on behalf of the clinic:

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

Licensed clinics are subject to unannounced inspections of the clinic by AHCA personnel to determine compliance with the Health Care Clinic Act and applicable rules. The clinic must allow full and complete access to the premises and to billing records. The agency may deny, revoke, or suspend a health care clinic license and impose administrative fines of up to $5,000 per violation pursuant to s. 400.995, F.S.

<u>State Health Care Clinic Licensure Exemption</u>
Although all clinics must be licensed with the AHCA, s. 400.9905(4), F.S., contains a lengthy list of entities that are not considered a “clinic” for the purposes of clinic licensure. An entity that is licensed in Florida pursuant to various chapters specified in s. 400.9905(4)(a) - (4)(d), F.S., may be exempt from clinic licensure if it meets one of the following provisions:

- The entity is licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license;
- It is an entity that owns, directly or indirectly, an entity licensed or registered by the state under one or more of the specified practice acts that only provides services within the scope of its license;
- It is an entity that is owned, directly or indirectly, by an entity licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license;
- If the clinic performs only the technical component of a magnetic resonance imaging (MRI), static radiograph, computed tomography (CT scan), or positron emission scan (PET scan), and provides the professional interpretation of such services in a fixed facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Accreditation Association for Ambulatory Health Care (AAA) and the American College of Radiology (ACR), and the percentage of scans in the preceding quarter that were billed to a PIP insurance carrier is under 15 percent, the chief financial officer of the clinic may assume the responsibility for the conduct of systematic reviews of clinic billings to ensure they are not fraudulent or unlawful. See s. 400.9935(1)(g), F.S.; or
- An entity is under common ownership, directly or indirectly, with an entity licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license.

Exemptions from clinic licensure are also available for the following:

- An entity that is exempt from federal taxation under 26 U.S.C. sec. 501(c)(3) or sec. 501(c)(4);
- A community college or university clinic;
- An entity owned by the federal or state government, including agencies, subdivisions and municipalities;
- Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- Entities that provide only oncology or radiation therapy services by physicians licensed under chs. 458 or 459, F.S.; and
- Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

Health care providers and practitioners may voluntarily apply to the AHCA for a certificate of exemption under the act, but are not required to do so. Such providers find it useful to obtain a certificate of exemption to present to an insurance company, particularly a PIP insurer, to prove that the provider is not required to be licensed as a health care clinic.

Health Care and Personal Injury Protection Insurance Fraud; Interim Project Report

Staff of the Senate Banking and Insurance Committee produced an interim project report, *Florida's Motor Vehicle No-Fault Law*, (2006-102). The report outlined several recommendations based on the amount of health care and Personal Injury Protection (PIP) fraud that was found.[3] The fraud statistics indicated the severity of the challenge in enforcing personal injury protection fraud violations as the number of fraud referrals escalates. According to the Director of the DIF, PIP fraud referrals have increased over 400 percent from 2002-2003 (615 referrals) to 2004-2005 (2,628).

Florida's no-fault laws are exploited by sophisticated criminal organizations in schemes that involve heath care clinic fraud, staging (faking) car crashes,[4] manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering (referring patients to medic al providers for a bounty), according to representatives with the division.

According to DIF officials, the magnitude of the PIP fraud problem is illustrated by the large number of health care clinics established in Florida under the Health Care Clinic Act (Act). Current figures indicate that over 65 percent[5] of the more than 2,435 medical clinics licensed by the AHCA statewide are located in Dade, Broward, and Palm Beach counties. Moreover, 4,590 clinics have received exemption certificates and are therefore subject to no state regulation. (This figure does not count the clinics that have decided not to file for an exemption certificate with the AHCA.) Division intelligence indicates that "hundreds" of these clinics have been established primarily in the South Florida area for the sole purpose of perpetrating PIP fraud according to DIF officials.[6]

C. SECTION DIRECTORY:

Section 1. Creates s. 400.9905(1), F.S., relating to definitions of clinical facilities.

Section 2. Provides an effective date.

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[3] Florida's Chief Financial Officer found that insurance fraud costs the average Florida family $1500 per year in increased premiums and higher costs for goods and services.
[4] Health care clinic fraud and staged accidents are the most common types of PIP fraud.
[5] National Insurance Crime Bureau, White Paper: Addressing Personal Injury Protection Fraud through the Florida Medical Fraud Task Force (August 2005).
[6] Division of Fraud Budget Request, FY 2005-2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Facilities that are currently subject to licensure requirements and fees would no longer be subject to such requirements and fees.

D. FISCAL COMMENTS:

The Agency for Health Care Administration found that because the bill exempts certain clinics that are currently subject to licensure, there could be a reduction in the number of licensees/revenues; however,.since the licensure program is growing, the net increase in other licensed clinics would offset the reduction.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES