

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1882

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Health Care Clinics

DATE: April 9, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute for SB 1882 redefines the criteria under which certain health care providers and practitioners are held to be exempt from licensure under the Health Care Clinic Act (ss. 400.990-400.995, F.S.). Current law exempts from licensure group practices and other entities that are wholly owned by one or more health care practitioners licensed under various laws, subject to certain other criteria. Under the bill, in order for the exemption to apply, the health care services provided could not exceed the scope of the licensed owner's health care license. However, this requirement would not apply to practices or entities owned by medical physicians, osteopaths, chiropractors, dentists, or podiatrists.

The bill requires that the medical or clinic director of a clinic ensure that all health care practitioners at the clinic provide health care services in accordance with their license or as required by law. Additionally, the clinic or medical director is limited to being the medical or clinic director of a maximum of three clinics with a cumulative total of no more than 100 employees and persons under contract at a given time.

The bill states that a license may not be granted to a health care clinic if the applicant or party subject to background screening related to the clinic has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or has been found guilty of any offense under the level 2 standards for screening in ch. 435, F.S., and other specified offenses.

The bill requires the Agency for Health Care Administration (AHCA or agency) to conduct, pursuant to clinic licensure, a background screening of any person with a financial interest in a clinic that has control or approval authority over clinic billing, policies, business activities, or personnel decisions, including third party billing persons, managers, and management

companies; or any person that provides anything of value exceeding a total of \$5,000. The agency is given rulemaking authority to administer the background-screening requirement.

Applicants for clinic licensure must provide the AHCA with the serial or operating numbers of each magnetic resonance imaging (MRI), static radiograph (static X-ray), computed tomography, or positron emission tomography machine used by the clinic if the clinic performs the technical component (the scan itself) and provides the professional component (interpreting the scan) of such services itself or uses an independent contractor to provide the professional component.

The bill places a 2-year expiration date on each certificate of exemption. Certain provider-owned entities that are currently exempt must apply for and maintain a valid certificate of exemption if they provide personal injury protection (PIP) related health care services for which payment is made pursuant to s. 627.736, F.S., and are located in any of the three counties that the Division of Insurance Fraud certifies as experiencing the greatest number of arrests by the division during the prior two years. The bill authorizes the AHCA to investigate any applicant claiming an exemption for purposes of compliance, and provides it with access to the premises of a certificate holder or applicant and all billings and records indicated in s. 400.9915(2), F.S., and in agency rules. A health care provider that self determines or claims a certificate of exemption but does not meet the exemption claimed is subject to the provisions applicable to the unlicensed operation of a health care clinic.

The bill makes intentionally providing false information on an application for a certificate of exemption from clinic licensure grounds for disciplinary action pursuant to s. 456.072, F.S.

This bill substantially amends the following sections of the Florida Statutes: 400.9905, 400.991, 400.9935, and 456.072.

## **II. Present Situation:**

### **Health Care Clinic Act - Clinic Licensure**

Part XIII of ch. 400, F.S., contains the Health Care Clinic Act (ss. 400.990-400.995, F.S.). Under the act, the AHCA 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.<sup>1</sup> The definition of clinic includes mobile clinics<sup>2</sup> and portable equipment providers.<sup>3</sup>

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,

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<sup>1</sup> Section 400.9905(4), F.S.

<sup>2</sup> Section 400.9905(6), F.S., defines a “mobile clinic” as “a movable or detached self-contained health care unit within or from which direct health care services are provided to individuals and which otherwise meets the definition of a clinic in subsection (4).”

<sup>3</sup> Section 400.9905(7), F.S., defines a “portable equipment provider” as “an entity that contracts with or employs persons to provide portable equipment to multiple locations performing treatment or diagnostic testing of individuals, that bills third-party payors for those services, and that otherwise meets the definition of a clinic in subsection (4).”

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 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.<sup>4</sup>

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.

### **Health Care Clinic Act - Exemption from Licensure**

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<sup>5</sup> in s. 400.9905(4)(a) - (4)(d), F.S., may be exempt from clinic licensure if it meets one of the following provisions:

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<sup>4</sup> 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.

<sup>5</sup> The licensures that permit an entity to be exempt from clinic licensure are licensures for: Hospitals (ch. 395, F.S.); Birthing Centers (ss. 383.30-383.335, F.S.); Termination of Pregnancy/Abortion (ch. 390, F.S.); Mental Health (ch. 394, F.S.);

- 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;<sup>6</sup>
- 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; 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.

In order to meet the above criteria for exemption from clinic licensure, the clinic cannot offer health care services beyond the scope of its license. For example, if the entity is exempt from licensure because it is licensed under ch. 463, F.S., for optometry, then the clinic's services are limited to those authorized under ch. 463, F.S., relating to optometry.

Also eligible for an exemption is a sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, F.S. (which includes physicians, osteopaths, chiropractors, podiatrists, dentists, and optometrists), that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

Similarly, a sole proprietorship, group practice, partnership or corporation that provides health care services by licensed health care practitioners under specified practice acts<sup>7</sup> is also eligible for licensure. The entity must be wholly owned by one or more licensed health care practitioners<sup>8</sup> or the practitioners and the spouse, parent, child or sibling of the licensed health care practitioner. One of the owners who is a licensed health care practitioner must supervise the business activities of the entity and ensure compliance with all federal and state laws. A health care practitioner is not permitted to supervise services beyond the scope of that practitioner's

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Substance Abuse (ch. 397, F.S.); ch. 400, F.S., licensure, except for licensure under the Health Care Clinic Act; Optometry (ch. 463, F.S.); Pharmacy (ch. 465, F.S.); Dentistry (ch. 466, F.S.); Electrolysis (ch. 478, F.S.); Clinical Laboratories (part I of ch. 483, F.S.); Optical Devices and Hearing Aids (ch. 484, F.S.); and Continuing Care (ch. 651, F.S.). Other qualifying entities include end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; and an entity that provides neonatal or pediatric hospital based healthcare services by licensed practitioners solely within a hospital licensed under ch. 395, F.S.

<sup>6</sup> See footnote 5.

<sup>7</sup> The practice acts specified in the exemption are for: Acupuncture (ch. 457, F.S.); Medicine, including physicians assistants (ch. 458, F.S.); Osteopathy (ch. 459, F.S.); Chiropractic, including chiropractic assistants (ch. 460, F.S.); Podiatry (ch. 461, F.S.); Naturopathy (ch. 462, F.S.); Optometry (ch. 463, F.S.); Dentistry (ch. 466, F.S.); Midwifery (ch. 467, F.S.); Massage Therapy (ch. 480, F.S.); Optical Devices and Hearing Aids (ch. 484, F.S.); Physical Therapy (ch. 486, F.S.); Psychology (ch. 490, F.S.); Clinical Counseling (ch. 491, F.S.); Speech-Language Pathology and Audiology (Part I of ch. 468, F.S.); Occupational Therapy (part III of ch. 468, F.S.); Dietetic and Nutrition (part X of ch. 468, F.S.); Athletic Trainers (part XIII of ch. 468, F.S.); Orthotics, Prosthetics and Pedorthics (part XIV of ch. 468, F.S.); and Advanced Registered Nurse Practitioners (s. 464.012, F.S.).

<sup>8</sup> See footnote 7.

license.<sup>9</sup> However, the entity may employ physicians and practitioners to perform and supervise health care services that are beyond the scope of the owner's licensure.

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 following is a summary of information contained in the report related to health care and PIP fraud.

Florida's Chief Financial Officer estimates that insurance fraud costs the average Florida family as much as \$1,500 a year in increased premiums and higher costs for goods and services. Motor vehicle insurance fraud and abuse constitute a large part of these costs.<sup>10</sup> Therefore, efforts to reduce fraud and abuse are critical to maintaining a viable no-fault insurance system in this state.

The fraud statistics indicate 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 Division of Insurance Fraud or (DIF), PIP fraud referrals have increased over 400 percent from 2002-2003 (615 referrals) to 2004-2005 (2,628).<sup>11</sup> The division is able to open less than 25 percent of these referrals, according to the division's director.

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<sup>9</sup> An exception is that a clinic owned by a licensee in s. 456.053(3)(b), F.S. (comprehensive rehabilitation services for speech, occupational or physical therapy) that only provides services authorized pursuant to s. 456.053(3)(b), F.S., may be supervised by a licensee specified by that section (part I or III of ch. 468, F.S., or ch. 486, F.S.).

<sup>10</sup> Insurance fraud involves intentional deception or misrepresentation intended to result in an unauthorized or illegal benefit (e.g., billing for services not rendered). Insurance abuse usually involves charging for services that are not medically necessary, do not conform to professionally recognized standards, or are unfairly priced. Abuse may be similar to fraud except that it is not possible to establish that the abusive acts were done with intent to deceive the insurer.

<sup>11</sup> The 2005 information is from January through July 2005.

Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes,<sup>12</sup> 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 medical providers for a bounty), according to representatives with the division.

Personal injury protection fraud is more prevalent in major metropolitan areas like Miami-Dade County, which has been the focus of the majority of staged crashes investigated by the division. In the past 24 months, the Miami-Dade office has received 277 complaints or referrals about staged crashes alone, investigated 116 of these, and arrested 260 offenders associated with PIP fraud. Also, more than 60 individuals have now been charged under the 2003 law that mandated a mandatory minimum 2-year prison term for staging vehicle crashes.

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<sup>13</sup> of the more than 2,435 medical clinics licensed by the AHCA statewide are located in Dade, Broward, and Palm Beach counties.<sup>14</sup> 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.<sup>15</sup> The types of crimes perpetrated by these clinics often involve fraudulent providers (who fabricate their credentials, bills, or the office itself);<sup>16</sup> medical mills that provide treatments that are not medically necessary,<sup>17</sup> purposely miscode diagnosis, inflate bills or charge for services that are not rendered; or "doc in the box" schemes where often older medical providers are paid for the use of their license.

Officials with the AHCA have found that various fraudulent motor vehicle insurance acts currently prohibited under part I of ch. 817, F.S., are not disqualifying offenses for clinic licensure. These crimes include presenting a false or fraudulent motor vehicle insurance

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<sup>12</sup> Health care clinic fraud and staged accidents are the most common types of PIP fraud.

<sup>13</sup> National Insurance Crime Bureau, White Paper: *Addressing Personal Injury Protection Fraud through the Florida Medical Fraud Task Force* (August 2005). The Florida Medical Fraud Task Force is made up of NICB agents, DIF detectives, and insurance company investigators and focuses primarily on clinics providing PIP services to persons involved in automobile accidents in South Florida. Often these "investigations surround soft tissue injuries and chiropractic treatment." (Page 3 of White Paper.)

<sup>14</sup> Data as of September 2005. Officials with the AHCA state that of the 2,435 licensed clinics, 40 licenses have been denied and 23 of these were denied due to background screening issues. Twenty-eight clinics are in litigation with the agency and there are 154 applications currently being reviewed for licensure. Currently, the Unit receives about 50 licenses and 100 certificates of exemption applications a month.

<sup>15</sup> Division of Insurance Fraud Budget Request, FY 2005-2006. See also NICB White Paper, at note 122.

<sup>16</sup> Recently, five medical clinics in the City of Hialeah were dismantled along with the arrest of six people, which involved sham invoices worth over \$2 million.

<sup>17</sup> On September 22, 2005, 17 physicians, physical therapists, a physician's assistant and others were sentenced to prison in Miami for fraudulently billing Medicare and private insurance companies for approximately \$5.5 million of medical services, medical equipment, medications, and physical therapy that was either not provided or was medically unnecessary. The scheme involved several clinics, medical supply and durable medical equipment companies paying kickbacks to Medicare beneficiaries to serve as patients of the clinics and three other medical companies.

application to an insurer; presenting a false or fraudulent vehicle insurance card; and obtaining a motor vehicle with the intent to defraud. Adding these criminal provisions to the Act would prohibit persons convicted of these motor vehicle crimes from obtaining a clinic license.

The interim project report made the following recommendations related to health care clinics:

- Require all clinics that accept PIP reimbursement and that qualify for an exemption from licensure to apply to the AHCA for an exemption certificate limited to 2 years and subject to a renewal application, and authorize the AHCA to inspect such clinics.
- Require that motor vehicle insurance fraud crimes under part I of ch. 817, F.S., be disqualifying offenses for clinic licensure.
- Mandate that clinics post anti-fraud reward signs.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 400.9905(4), F.S., to redefine the criteria under which certain health care providers and practitioners are held to be exempt from licensure under the Health Care Clinic Act.

Under current s. 400.9905(4)(f), F.S., a sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, F.S. (physicians, osteopaths, podiatrists, chiropractors, dentists, and optometrists), is exempt from licensure if the health care services are supervised by at least one of those physicians and is wholly owned by one or more such physicians or by a physician and a spouse, parent, child, or sibling of the physician. The bill clarifies this provision by stating that clinics wholly owned by health care practitioners licensed by the state under ch. 458, F.S. (medical physicians), ch. 459, F.S. (osteopathic physicians), ch. 460, F.S. (chiropractic physicians), ch. 461, F.S. (podiatric physicians), or ch. 466, F.S. (dentists), are exempt from licensure. The treatment provided must still be directly supervised by at least one of these types of health care practitioners and the entity must be wholly owned by one or more such practitioners or by a practitioner and the spouse, parent, child, or sibling of that practitioner.

Paragraph (g) of s. 400.9905(4), F.S., is also amended by the bill. The amended paragraph (g) is similar to the current paragraph (f) described above, except that it provides an exemption from licensure as a health care clinic to health care practitioners licensed under different chapters of the Florida Statutes. The practice acts included in this paragraph include ch. 457, F.S. (acupuncture), physician assistants under chapters 458, 459, 460, or 461, ch. 462, F.S. (naturopathy), ch. 463, F.S. (optometrists), ch. 467, F.S. (midwifery), ch. 480, F.S. (massage therapists), ch. 484, F.S. (opticians and hearing aid specialists), ch. 486, F.S. (physical therapists), ch. 490, F.S. (psychology), ch. 491, F.S. (clinical counselors), part I of ch. 468, F.S. (speech language pathology and audiology), part III of ch. 468, F.S. (occupational therapists), part X of ch. 468, F.S. (dietetics), part XIII of ch. 468, F.S. (athletic trainers), part XIV of ch. 468, F.S. (orthotics, prosthetics, and pedorthics), and s. 464.012, F.S. (advanced registered nurse practitioners). The bill requires at least one owner who is a licensed health care practitioner to supervise the health care services rendered, rather than the business activities of the entity. Additionally, the bill states that in order to qualify for an exemption from licensure, the health care services provided by the entity cannot exceed the scope of the licensed owner's health care

license. Currently, the requirement is that each practitioner may not supervise services beyond the scope of the practitioner's license.

**Section 2.** Amends s. 400.9905, F.S., to increase the scope of a background screening.

The bill amends subsection (5) to require AHCA to conduct background screening of any person who has a financial interest in a clinic. Persons with a financial interest in a clinic include persons who may or may not own stock or an equivalent interest in the clinic, but nonetheless have control over or the authority to approve, directly or indirectly, clinic billing, policy, business activities, or personnel decisions. Such control or authority includes but is not limited to contracted or employed third-party billing persons or entities, managers, and management companies, as well as persons and entities that directly or indirectly lend, give or gift money of any denomination or anything of value exceeding an aggregate of \$5,000, for clinic use, with or without an expectation of a return of the money or thing of value, and regardless of profit motive.

The bill gives AHCA authority to adopt rules to implement subsection (5).

Subsection (7) is amended regarding the background screening that must be conducted by AHCA upon receipt of a completed application for clinic licensure. Current law requires the applicant to undergo level 2 background screening. The bill also applies the level 2 background screening requirements to any person who has a controlling interest as defined in s. 408.803(7), F.S. This means the applicant or licensee; a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the applicant or licensee; or a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider.

The agency is given authority in paragraph (7)(c) to deny or revoke licensure if the applicant of any person having a financial interest in the clinic has experienced an exclusion, permanent suspension or termination from the Medicare or Medicaid program.

A license may not be granted to a clinic pursuant to paragraph (7)(d), if the applicant or other person subject to background screening requirements has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or has been found guilty of any offense under the level 2 standards for screening in ch. 435, F.S. In addition, to the level 2 background screening requirements set forth in s. 408.809, F.S., all persons who must meet the level 2 standards of ch. 435, F.S., shall also undergo level 2 background screening for any felony offense under ch. 400, F.S. (nursing homes and related health care facilities), ch. 408, F.S. (Health Facility and Services Development Act), ch. 409, F.S. (social services and economic assistance), ch. 440, F.S. (Workers' Compensation Law), ch. 456, F.S. (regulation of health professions), ch. 624, F.S. (Florida Insurance Code), ch. 626, F.S. (insurance agents, administrators, surplus lines insurance, viatical settlements, structured settlements, unfair and deceptive trade practices), ch. 627, F.S. (insurance rates and contracts), ch. 812, F.S. (theft, robbery, and related crimes), ch. 817, F.S. (fraudulent practices and credit card crimes), ch. 831, F.S. (forgery and counterfeiting), ch. 837, F.S. (perjury), ch. 838, F.S. (bribery/misuse of public office), ch. 895, F.S. (Florida RICO Act: racketeering), ch. 896, F.S. (Florida Money



Laundering Act); or any substantially comparable felony offense or crime of another state or of the United States.

The bill increases from 5 to 10 years the time period that an applicant must be free of the disqualifying conduct set forth in s. 400.991(7), F.S. Each person required to provide a background screening for clinic licensure may be required to disclose to the AHCA any arrest for any crime for which any court disposition other than dismissal has been made within the past 10 years; failure to do so may be considered a material omission in the application process which can lead to the denial or removal of a clinic exemption or license. Notwithstanding the time provisions of ch. 120, F.S., for granting or denying an application for a license, the agency shall not approve an initial, renewal or change of ownership application to any applicant whose background screening process is not complete and all persons required to undergo screening demonstrate compliance with the background screening requirements. The AHCA shall deny a pending application, or revoke, suspend, and assess an administrative penalty against the licensee when the agency substantiates that a person required to meet background screening standards has failed or refused to submit to background screening, or does not meet the minimum requirements of such screening after the timely submission of fingerprint cards to the Agency.

The bill states that the AHCA may declare the loss of exempt status from licensure effective the date the exempt status is not met if the applicant has falsely represented any material fact from the application required by this part or agency rule. This is in addition to current authority to deny and revoke licensure for such reasons. Exempt status ceases to exist on any date a business does not qualify for an exemption under this part or the Health Care Licensing Procedures Act. When a clinic meets the definition of a clinic as set forth in s. 400.9905(4), F.S., and operates, the clinic is unlicensed and subject to the penalties and remedies provided by this part and the Health Care Licensing Procedures Act.

Each applicant that performs the technical component of MRI, static X-ray, computer tomography, or positron emission tomography, and also provides the professional components of such services through an employee or independent contractor must provide to the AHCA on a form provided by the agency, the name and address of the clinic, the serial or operating number of each MRI, static X-ray, computer tomography, and positron emission tomography machine, the name of the manufacturer of the machine, and such other information as required by the agency to identify the machine. The information must be provided to the agency upon renewal of the clinic's licensure and within 30 days after a clinic begins using a machine for which it has not provided the information to the agency.

The requirement is designed to prevent the use of a machine used to provide a scan or X-ray that has failed to meet the accreditation requirements required for clinic licensure under s. 400.9935(11), F.S. Under that subsection, the Joint Commission on Accreditation of Healthcare Organizations, the American College of Radiology, or the Accreditation Association must accredit a clinic that performs MRI services within 1 year of licensure for Ambulatory Health Care.

**Section 3.** Amends s. 400.9935, F.S., to require that the medical or clinic director of a clinic ensure that all practitioners providing health care services or supplies to patients at the clinic do

not provide such services or supplies outside the scope of that license or as otherwise prohibited by law.

Additionally, the clinic or medical director is limited to being the medical or clinic director of a maximum of three health care clinics with a cumulative total of no more than 100 employees and persons under contract with the clinic at a given time. However, the AHCA may allow for waivers to the limitations upon a showing of good cause and if the agency determines that the medical director will be able to adequately perform his or her duties.

The bill provides that certificates of exemption from licensure expire in 2 years and may be renewed. However, a clinic that is exempt under s. 400.9905(4)(f) or (g) must apply for a certificate of exemption if the clinic provides health care services for which payment is made pursuant to s. 627.736, F.S., and the entity is located in any of the three counties that the Division of Insurance Fraud certifies as experiencing the greatest number of arrests by the division during the prior two years, which currently are Miami-Dade, Broward, and Palm Beach Counties, according to the Division of Insurance Fraud. A certificate of exemption is not required for such a provider, however, if the health care provider's practice act prohibits an individual who is not similarly licensed from owning or operating the health care provider's practice and prohibits individuals not similarly licensed from interfering with the health care provider's clinical judgment. An entity that is required to apply for a certificate of exemption must renew the certificate every two years as a condition of maintaining an exemption from licensure. This requirement applies to sole proprietorships, group practices, partnerships, etc., that are owned by specified health care practitioners and that meet specified criteria for exemption. This requirement would not apply to other exempt entities, which are primarily licensed health care facilities or entities that own or are owned by such facilities, as well as other relatively narrow exemptions.

The AHCA must provide a form that requires the name or names and addresses, a statement of the reasons why the applicant is exempt from licensure as a health care clinic, and other information deemed necessary by the agency. The signature on an application for a certificate of exemption must be notarized and signed by persons having knowledge of the truth of its contents. An exemption is not transferable and is valid only for the reasons, location, persons, and entity set forth on the application form. A person or entity claiming an exemption or issued a current certificate of exemption must be exempt from the licensing provisions at all times or such claim or certificate is invalid from the date that such person or entity is not exempt.

The AHCA must charge an applicant for a certificate of exemption a fee of \$100 to cover the cost of processing the certificate or the actual cost of processing the certificate, whichever is less. An application for the renewal of such certificate must be submitted to the agency 60 days prior to the expiration of such certificate. The AHCA may investigate any applicant, person, or entity claiming an exemption for purposes of determining compliance when such certificate of exemption is sought. Authorized personnel of the AHCA have access to the premises of any clinic for the sole purpose of determining compliance with an exemption, and also have access to all billings and records indicated in s. 400.9915(2), F.S. (unannounced inspection and access to billing records, etc., of clinics by an authorized officer or employee of the AHCA to determine compliance), and agency rules.

The AHCA may deny or withdraw a certificate of exemption when a person or entity does not qualify for the exemption. Such certificate is considered withdrawn when the agency determines that an exempt status cannot be confirmed. The provisions applicable to the unlicensed operation of a health care clinic apply to any health care provider that self-determines or claims an exemption or that is issued such certificate if, in fact, such clinic does not meet the exemption claimed. The bill provides that it is a third degree felony for any person or entity to submit an application for a certificate of exemption which contains fraudulent or material and misleading information.

A response to a request in writing for additional information or clarification must be filed with the agency no later than 21 days after receipt of the request or the application shall be denied. The agency shall grant or deny an application for a certificate of exemption in accordance with s. 120.60(1), F.S. (requirements under the Administrative Procedure Act relating to an agency's review of an application for a license). A person or entity that qualifies as a health care clinic or specialty clinic and has been denied a certificate of exemption must file an initial application and pay the fee. Such certificate is valid only when issued and current.

The AHCA must issue an emergency order of suspension of a certificate of exemption when the agency finds that the applicant has provided false or misleading material information or omitted any material fact from the application for a certificate of exemption which is permitted or required, or has submitted false or misleading information to the agency when self-determining an exempt status and materially misleading the agency as to such status.

**Section 4.** Amends s. 456.072, F.S., to provide that intentionally providing false information on an application for a certificate of exemption from clinic licensure under part XIII of ch. 400, F.S., constitutes a ground for disciplinary action as provided in that section, such as suspension or revocation of a license.

**Section 5.** The bill takes effect on October 1, 2007.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill is likely to increase the number of entities required to obtain licensure as a health care clinic licensure, subjecting them to additional costs, requirements, and oversight by the AHCA. An entity seeking to retain a certificate of exemption will have to re-apply for a renewal of the certificate every 2 years, paying the \$100 application fee each time. Also, provider-owned practices that are exempt in the three counties with the highest incidence of fraud arrests (currently, Miami-Dade, Broward, and Palm Beach) will be required to obtain a certificate of exemption in order to verify their exempt status.

The provisions of the bill may reduce personal injury protection insurance fraud and other types of health care or insurance fraud, which is a large and growing problem in the health care clinic arena.

**C. Government Sector Impact:**

There will be an increase in the AHCA's oversight responsibilities over clinics and in exempting entities that file for a certificate of exemption from clinic licensure. Limiting certificate of exemptions to 2 years will increase renewal application fees paid to the AHCA with a corresponding increase in workload to process the renewal applications.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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