

By Senator Garcia

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1 A bill to be entitled

2 An act relating to insurance fraud; creating s. 324.0221,
3 F.S.; prohibiting an owner or operator of a motor vehicle
4 from recovering noneconomic damages if the owner or
5 operator cannot establish that he or she maintained proof
6 of financial responsibility for the vehicle at the time of
7 the accident by one of the methods specified by state law;
8 providing an exception for a claim against a person who
9 intentionally caused the injury or acted with gross
10 negligence; amending s. 400.990, F.S.; providing
11 additional legislative findings; amending s. 400.9905,
12 F.S.; redefining the term "clinic" for purposes of the
13 Health Care Clinic Act to include certain additional
14 providers; excluding certain facilities owned by publicly
15 traded corporations; defining the terms "specialty
16 clinic," "infusion therapy," and "fraud"; amending s.
17 400.991, F.S.; requiring specialty clinics to be subject
18 to licensure requirements; requiring additional persons to
19 be subject to background screening; revising certain
20 requirements for applying for licensure as a health care
21 clinic; creating additional requirements for applying for
22 licensure as a specialty clinic; providing additional
23 grounds under which an applicant may be denied licensure
24 due to a finding of guilt for committing a felony;
25 providing grounds for the denial of specialty clinic
26 licensure; amending s. 400.9925, F.S.; providing the
27 Agency for Health Care Administration with rulemaking
28 authority regarding specialty clinics; stating that the
29 licensure fee for a specialty clinic is nonrefundable and

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30 | may not exceed \$2,000; amending s. 400.993, F.S.;

31 | including specialty clinics within provisions regarding

32 | unlicensed clinics; providing penalties for unlicensed

33 | operation of a specialty clinic; amending s. 400.9935,

34 | F.S.; including specialty clinics within provisions

35 | regarding clinic responsibilities; revising the

36 | responsibilities of the medical director and the clinical

37 | director; requiring a specialty clinic to file an audited

38 | report with the agency no less frequently than annually;

39 | amending s. 400.995, F.S.; authorizing the Agency for

40 | Health Care Administration to impose administrative

41 | penalties against a specialty clinic; creating s. 400.996,

42 | F.S.; creating a process whereby the agency receives,

43 | documents, and processes complaints about specialty

44 | clinics; requiring the agency to request that complaints

45 | regarding billing fraud by a specialty clinic be made by

46 | sworn affidavit; requiring the agency to refer to the

47 | Department of Financial Services, Office of Fiscal

48 | Integrity, any sworn affidavit asserting billing fraud by

49 | a specialty clinic; requiring the department to report

50 | findings regarding billing fraud by a specialty clinic to

51 | the agency; requiring the department to refer an

52 | investigation to prosecutorial authorities and provide

53 | investigative assistance under certain circumstances;

54 | providing that it is a first-degree misdemeanor to submit

55 | an affidavit asserting billing fraud by a specialty clinic

56 | which is without any factual basis; allowing the

57 | department to conduct unannounced reviews, investigations,

58 | analyses, and audits to investigate complaints of billing

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59 fraud by a specialty clinic; authorizing the department to
60 enter upon the premises of a specialty clinic and
61 immediately secure copies of certain documents; requiring
62 a specialty clinic to allow full and immediate access to
63 the premises and records of the clinic to a department
64 officer or employee under s. 400.996, F.S.; providing that
65 failure to provide such access is a ground for emergency
66 suspension of the license of the specialty clinic;
67 permitting the agency to assess a fee against a specialty
68 clinic equal to the cost of conducting a review,
69 investigation, analysis, or audit performed by the agency
70 or the department; providing that all investigators
71 designated by the Chief Financial Officer to perform
72 duties under part XIII of ch. 400, F.S., and certified
73 under s. 943.1395, F.S., are law enforcement officers of
74 the state; amending s. 456.072, F.S.; providing that
75 intentionally placing false information in an application
76 for a certificate of exemption from clinic licensure
77 constitutes grounds for which disciplinary action may be
78 taken; designating the Florida Center for Nursing as the
79 "Florida Barbara B. Lumpkin Center for Nursing"; directing
80 the Department of Health to erect suitable markers;
81 providing appropriations; authorizing investigative
82 enforcement and clerical positions and a salary rate;
83 repealing s. 19, ch. 2003-411, Laws of Florida; abrogating
84 the repeal of the Florida Motor Vehicle No-Fault Law as
85 provided for in that section; repealing ss. 627.730,
86 627.731, 627.732, 627.733, 627.734, 627.736, 627.737,
87 627.739, 627.7401, 627.7403, and 627.7405, F.S., the

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88 Florida Motor Vehicle No-Fault Law, and providing for
89 future review and reenactment; providing an effective
90 date.

91

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

93

94 Section 1. Section 324.0221, Florida Statutes, is created
95 to read:

96 324.0221 Proof of financial responsibility required to
97 recover noneconomic damages.--In any action to recover damages
98 arising out of the operation or use of a motor vehicle, a person
99 may not recover noneconomic damages to compensate for pain,
100 suffering, inconvenience, or other noneconomic loss or damages if
101 the person was the owner or operator of a vehicle involved in the
102 accident and cannot establish that he or she maintained proof of
103 financial responsibility for that vehicle at the time of the
104 accident by one of the methods specified in s. 324.031. However,
105 this restriction does not apply to a claim for noneconomic
106 damages against a person who intentionally caused, or who acted
107 in a grossly negligent manner in causing, the injury giving rise
108 to the noneconomic damages.

109 Section 2. Section 400.990, Florida Statutes, is amended to
110 read:

111 400.990 Short title; legislative findings.--

112 (1) This part, consisting of ss. 400.990-400.996 ~~ss.~~
113 ~~400.990-400.995~~, may be cited as the "Health Care Clinic Act."

114 (2) The Legislature finds that the regulation of health
115 care clinics must be strengthened to prevent significant cost and
116 harm to consumers.

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117 (3) The Legislature further finds the additional regulation
118 of specialty health care clinics is necessary to prevent
119 significant fraudulent practices in the provision of infusion
120 therapy services in this state.

121 (4) The purpose of this part is to provide for the
122 licensure, establishment, and enforcement of basic standards for
123 health care clinics and to provide administrative oversight by
124 the Agency for Health Care Administration.

125 Section 3. Subsection (4) of section 400.9905, Florida
126 Statutes, is amended, and subsections (8), (9), and (10) are
127 added to that section, to read:

128 400.9905 Definitions.--

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

135 (a) Entities licensed or registered by the state under
136 chapter 395; or entities licensed or registered by the state and
137 providing only health care services within the scope of services
138 authorized under their respective licenses granted under ss.
139 383.30-383.335, chapter 390, chapter 394, chapter 397, this
140 chapter except part X, chapter 429, chapter 463, chapter 465,
141 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
142 chapter 651; end-stage renal disease providers authorized under
143 42 C.F.R. part 405, subpart U; or providers certified under 42
144 C.F.R. part 485, subpart B or subpart H; or any entity that
145 provides neonatal or pediatric hospital-based health care

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146 services or other health care services by licensed practitioners
147 solely within a hospital licensed under chapter 395.

148 (b) Entities that own, directly or indirectly, entities
149 licensed or registered by the state pursuant to chapter 395; or
150 entities that own, directly or indirectly, entities licensed or
151 registered by the state and providing only health care services
152 within the scope of services authorized pursuant to their
153 respective licenses granted under ss. 383.30-383.335, chapter
154 390, chapter 394, chapter 397, this chapter except part X,
155 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
156 part I of chapter 483, chapter 484, chapter 651; end-stage renal
157 disease providers authorized under 42 C.F.R. part 405, subpart U;
158 or providers certified under 42 C.F.R. part 485, subpart B or
159 subpart H; or any entity that provides neonatal or pediatric
160 hospital-based health care services by licensed practitioners
161 solely within a hospital licensed under chapter 395.

162 (c) Entities that are owned, directly or indirectly, by an
163 entity licensed or registered by the state pursuant to chapter
164 395; or entities that are owned, directly or indirectly, by an
165 entity licensed or registered by the state and providing only
166 health care services within the scope of services authorized
167 pursuant to their respective licenses granted under ss. 383.30-
168 383.335, chapter 390, chapter 394, chapter 397, this chapter
169 except part X, chapter 429, chapter 463, chapter 465, chapter
170 466, chapter 478, part I of chapter 483, chapter 484, or chapter
171 651; end-stage renal disease providers authorized under 42 C.F.R.
172 part 405, subpart U; or providers certified under 42 C.F.R. part
173 485, subpart B or subpart H; or any entity that provides neonatal
174 or pediatric hospital-based health care services by licensed

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175 practitioners solely within a hospital under chapter 395.

176 (d) Entities that are under common ownership, directly or
177 indirectly, with an entity licensed or registered by the state
178 pursuant to chapter 395; or entities that are under common
179 ownership, directly or indirectly, with an entity licensed or
180 registered by the state and providing only health care services
181 within the scope of services authorized pursuant to their
182 respective licenses granted under ss. 383.30-383.335, chapter
183 390, chapter 394, chapter 397, this chapter except part X,
184 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
185 part I of chapter 483, chapter 484, or chapter 651; end-stage
186 renal disease providers authorized under 42 C.F.R. part 405,
187 subpart U; or providers certified under 42 C.F.R. part 485,
188 subpart B or subpart H; or any entity that provides neonatal or
189 pediatric hospital-based health care services by licensed
190 practitioners solely within a hospital licensed under chapter
191 395.

192 (e) An entity that is exempt from federal taxation under 26
193 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
194 under 26 U.S.C. s. 409 that has a board of trustees not less than
195 two-thirds of which are Florida-licensed health care
196 practitioners and provides only physical therapy services under
197 physician orders, any community college or university clinic, and
198 any entity owned or operated by the federal or state government,
199 including agencies, subdivisions, or municipalities thereof.

200 (f) A sole proprietorship, group practice, partnership, ~~or~~
201 corporation, or other legal entity that provides health care
202 services by physicians and physician assistants licensed under
203 chapter 458, chapter 460, chapter 461, or chapter 466 ~~covered by~~

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204 ~~s. 627.419~~, that is directly supervised by one or more of such
205 physician assistants or physicians, and that is wholly owned by
206 one or more of those physician assistants or physicians or by a
207 physician assistant or physician and the spouse, parent, child,
208 or sibling of that physician assistant or physician.

209 (g) A sole proprietorship, group practice, partnership, ~~or~~
210 corporation, or other legal entity that provides health care
211 services by licensed health care practitioners under chapter 457,
212 ~~chapter 458, chapter 459, chapter 460, chapter 461, chapter 462,~~
213 chapter 463, ~~chapter 466,~~ chapter 467, chapter 480, chapter 484,
214 chapter 486, chapter 490, chapter 491, or part I, part III, part
215 X, part XIII, or part XIV of chapter 468, or s. 464.012, which
216 entities are wholly owned by one or more licensed health care
217 practitioners, or the licensed health care practitioners set
218 forth in this paragraph and the spouse, parent, child, or sibling
219 of a licensed health care practitioner, so long as one of the
220 owners who is a licensed health care practitioner is supervising
221 the health care services ~~business activities~~ and is legally
222 responsible for the entity's compliance with all federal and
223 state laws. However, ~~a health care~~ services provided may not
224 exceed the scope of the licensed owner's health care practitioner
225 ~~may not supervise services beyond the scope of the practitioner's~~
226 license, except that, for the purposes of this part, a clinic
227 owned by a licensee in s. 456.053(3)(b) that provides only
228 services authorized pursuant to s. 456.053(3)(b) may be
229 supervised by a licensee specified in s. 456.053(3)(b).

230 (h) Clinical facilities affiliated with an accredited
231 medical school at which training is provided for medical
232 students, residents, or fellows.

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233 (i) Entities that provide only oncology or radiation
234 therapy services by physicians licensed under chapter 458 or
235 chapter 459 or entities that provide oncology or radiation
236 therapy services by physicians licensed under chapter 458 or
237 chapter 459 which are owned by a corporation whose shares are
238 publicly traded on a recognized stock exchange.

239 (j) Clinical facilities affiliated with a college of
240 chiropractic accredited by the Council on Chiropractic Education
241 at which training is provided for chiropractic students.

242 (k) Entities that provide licensed practitioners to staff
243 emergency departments or to deliver anesthesia services in
244 facilities licensed under chapter 395 and that derive at least 90
245 percent of their gross annual revenues from the provision of such
246 services. Entities claiming an exemption from licensure under
247 this paragraph must provide documentation demonstrating
248 compliance.

249 (l) Orthotic, ~~or~~ prosthetic, or other clinical facilities
250 that are a publicly traded corporation or that are wholly owned,
251 directly or indirectly, by a publicly traded corporation. As used
252 in this paragraph, a publicly traded corporation is a corporation
253 that issues securities traded on an exchange registered with the
254 United States Securities and Exchange Commission as a national
255 securities exchange.

256 (5) "Medical director" means a physician who is employed or
257 under contract with a clinic and who maintains a full and
258 unencumbered physician license in accordance with chapter 458,
259 chapter 459, chapter 460, or chapter 461. However, if the clinic
260 does not provide services pursuant to the respective physician
261 practices acts listed in this subsection, it may appoint a

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262 Florida-licensed health care practitioner who does not provide
263 services pursuant to the respective physician practices acts
264 listed in this subsection to serve as a clinic director who is
265 responsible for the clinic's activities. A health care
266 practitioner may not serve as the clinic director if the services
267 provided at the clinic are beyond the scope of that
268 practitioner's license, except that a licensee specified in s.
269 456.053(3)(b) who provides only services authorized pursuant to
270 s. 456.053(3)(b) may serve as clinic director of an entity
271 providing services as specified in s. 456.053(3)(b).

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

276 (7) "Portable equipment provider" means an entity that
277 contracts with or employs persons to provide portable equipment
278 to multiple locations performing treatment or diagnostic testing
279 of individuals, that bills third-party payors for those services,
280 and that otherwise meets the definition of a clinic in subsection
281 (4).

282 (8) "Specialty clinic" means a clinic not licensed as a
283 home health agency which provides infusion therapy services
284 either to outpatients who remain less than 24 hours at the
285 facility or to patients who receive such services where they
286 reside. The term does not include:

287 (a) Entities licensed under part II, part III, or part IV;

288 or

289 (b) Entities licensed under chapter 395.

290 (9) "Infusion therapy" includes, but is not limited to, the

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291 therapeutic infusion of substances into, or injection of
292 substances through, the venous peripheral system, consisting of
293 activity that includes: observing, initiating, monitoring,
294 discontinuing, maintaining, regulating, adjusting, documenting,
295 planning, intervening, and evaluating. This definition embraces
296 administration of nutrition, antibiotic therapy, and fluid and
297 electrolyte repletion.

298 (10) "Fraud" means deception or misrepresentation made by a
299 person or business entity with the intent that the deception will
300 likely result in an unauthorized benefit to herself or himself or
301 to another person. The term includes any act that constitutes
302 fraud under applicable federal or state law.

303 Section 4. Section 400.991, Florida Statutes, is amended to
304 read:

305 400.991 License requirements; background screenings;
306 prohibitions.--

307 (1) (a) The requirements of part II of chapter 408 apply to
308 the provision of services that require licensure pursuant to this
309 part and part II of chapter 408 and to entities licensed by or
310 applying for such licensure from the agency pursuant to this
311 part. A license issued by the agency is required in order to
312 operate a clinic or specialty clinic in this state. Each clinic
313 or specialty clinic location shall be licensed separately
314 regardless of whether the clinic or specialty clinic is operated
315 under the same business name or management as another clinic or
316 specialty clinic.

317 (b) Each mobile clinic or specialty clinic must obtain a
318 separate health care clinic license and must provide to the
319 agency, at least quarterly, its projected street location to

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320 enable the agency to locate and inspect such clinic and specialty
321 clinic. A portable equipment provider must obtain a health care
322 clinic license for a single administrative office and is not
323 required to submit quarterly projected street locations.

324 (c) A specialty clinic operating without a specialty clinic
325 license on October 1, 2008, shall be given a reasonable time, not
326 to exceed 6 months from the effective date of this act, to obtain
327 a specialty clinic license.

328 (2) The initial clinic license application shall be filed
329 with the agency by all clinics, as defined in s. 400.9905, on or
330 before July 1, 2004.

331 (3) The application shall contain information that
332 includes, but need not be limited to, information pertaining to
333 the name, residence and business address, phone number, social
334 security number, and license number of the medical or clinic
335 director and of the licensed medical providers employed or under
336 contract with the clinic.

337 (4) In addition to the requirements of part II of chapter
338 408, the applicant must file with the application satisfactory
339 proof that the clinic is in compliance with this part and
340 applicable rules, including:

341 (a) A listing of services to be provided either directly by
342 the applicant or through contractual arrangements with existing
343 providers;

344 (b) The number and discipline of each professional staff
345 member to be employed; and

346 (c) Proof of financial ability to operate as required under
347 s. 408.810(8). As an alternative to submitting proof of financial
348 ability to operate as required under s. 408.810(8), the applicant

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349 | may file a surety bond of at least \$500,000 which guarantees that
350 | the clinic will act in full conformity with all legal
351 | requirements for operating a clinic or specialty clinic, payable
352 | to the agency. The agency may adopt rules to specify related
353 | requirements for such surety bond.

354 | (5) Each applicant for licensure shall comply with the
355 | following requirements:

356 | (a) As used in this subsection, the term "applicant" means
357 | individuals owning or controlling, directly or indirectly, 5
358 | percent or more of an interest in a clinic; the medical or clinic
359 | director, or a similarly titled person who is responsible for the
360 | day-to-day operation of the licensed clinic; the financial
361 | officer or similarly titled individual who is responsible for the
362 | financial operation of the clinic; and licensed health care
363 | practitioners at the clinic.

364 | (b) Upon receipt of a completed, signed, and dated
365 | application, the agency shall require background screening of the
366 | applicant, in accordance with the level 2 standards for screening
367 | set forth in chapter 435. Proof of compliance with the level 2
368 | background screening requirements of chapter 435 which has been
369 | submitted within the previous 5 years in compliance with any
370 | other health care licensure requirements of this state is
371 | acceptable in fulfillment of this paragraph. ~~Applicants who own
372 | less than 10 percent of a health care clinic are not required to
373 | submit fingerprints under this section.~~

374 | (c) Any person or entity that has a pecuniary interest in a
375 | clinic who may or may not own stock or an equivalent interest in
376 | the clinic, but nonetheless has control over or the authority to
377 | approve, directly or indirectly, clinic billing, policy, business

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378 activities, or personnel decisions, including, but not limited
379 to, contracted or employed third-party billing persons or
380 entities, managers, and management companies, and persons and
381 entities, directly or indirectly, which lend, give, or gift money
382 of any denomination or any thing of value exceeding an aggregate
383 of \$5,000, for clinic use, with or without an expectation of a
384 return of the money or thing of value, and regardless of profit
385 motive, are subject to background screening requirements under
386 this part.

387 (d) The agency may adopt rules to administer this
388 subsection.

389 (e) ~~(e)~~ Each applicant must submit to the agency, with the
390 application, a description and explanation of any exclusions,
391 permanent suspensions, or terminations of an applicant from the
392 Medicare or Medicaid programs. Proof of compliance with the
393 requirements for disclosure of ownership and control interest
394 under the Medicaid or Medicare programs may be accepted in lieu
395 of this submission. The description and explanation may indicate
396 whether such exclusions, suspensions, or terminations were
397 voluntary or not voluntary on the part of the applicant.

398 (f) ~~(d)~~ A license may not be granted to a clinic if the
399 applicant has been found guilty of, regardless of adjudication,
400 or has entered a plea of nolo contendere or guilty to, any
401 offense prohibited under the level 2 standards for screening set
402 forth in chapter 435; any felony under chapter 400, chapter 408,
403 chapter 409, chapter 440, chapter 624, chapter 626, chapter 627,
404 chapter 812, chapter 817, chapter 831, chapter 837, chapter 838,
405 chapter 895, or chapter 896; or any substantially comparable
406 offense or crime of another state or of the United States, if a

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407 felony in that jurisdiction, within the past 10 years. Each
408 person required to provide background screening shall disclose to
409 the agency any arrest for any crime for which any court
410 disposition other than dismissal has been made within the past 10
411 years. Failure to provide such information shall be considered a
412 material omission in the application process, ~~or a violation of~~
413 ~~insurance fraud under s. 817.234, within the past 5 years.~~ If the
414 applicant has been convicted of an offense prohibited under the
415 level 2 standards or insurance fraud in any jurisdiction, the
416 applicant must show that his or her civil rights have been
417 restored prior to submitting an application.

418 (6) An application for a specialty clinic must contain, in
419 addition to the information required in subsection (5):

420 (a) The correct business name of each business entity and
421 full name of each individual holding any ownership interest of 5
422 percent or more, or any pecuniary interest of \$5,000 or more, in
423 any legal entity that owns or operates any specialty clinic
424 seeking licensure, whether such ownership or pecuniary interest
425 arose out of a contract, loan, gift, investment, inheritance, or
426 any other source. Individual possession of an ownership or
427 pecuniary interest in any subject specialty clinic includes, but
428 is not limited to, a direct or indirect interest in:

429 1. The business operation, equipment, or legend
430 pharmaceuticals used in the clinic;

431 2. The premises in which the clinic provides its services;
432 or

433 3. Any legal entity that owns any such interest, directly
434 or indirectly, in the business operation of the clinic; the
435 equipment used in providing infusion therapy services at the

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436 clinic; the legend pharmaceuticals used at the clinic; or the
437 premises in which the clinic provides its services.

438 (b) In the case of an incorporated business entity that
439 holds any ownership interest of 5 percent or more, or any
440 pecuniary interest of \$5,000 or more, in the specialty clinic,
441 copies of the articles of incorporation and bylaws, and the names
442 and addresses of all officers and directors of the corporation.

443 (c) On a form furnished by the agency, a sworn notarized
444 statement by each business entity and individual that holds any
445 ownership interest of 5 percent or more, or any pecuniary
446 interest of \$5,000 or more, in the subject specialty clinic which
447 discloses the nature and degree of each such ownership or
448 pecuniary interest, and that discloses the source of funds which
449 gave rise to each such ownership or pecuniary interest.

450 (d) On a form furnished by the agency, a sworn notarized
451 statement by each individual and business entity that holds any
452 ownership interest of 5 percent or more, or any pecuniary
453 interest of \$5,000 or more, in the subject specialty clinic which
454 discloses whether he or she has been an owner or part owner,
455 individually or through any business entity, of any business
456 entity whose health care license has been revoked or suspended in
457 any jurisdiction.

458 (e) On a form furnished by the agency, an estimate of the
459 costs for establishing the specialty clinic and the source of
460 funds for payment of those costs and for sustaining the operation
461 of the clinic until its operation produces a positive cash flow.

462
463 For purposes of this subsection, the term "ownership or pecuniary
464 interest" does not include any individual whose interest in a

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465 specialty clinic arises only out of his or her interest in a
466 lending company, insurance company, or banking institution
467 licensed by this state or any other state of the United States; a
468 company regularly trading on a national stock exchange of the
469 United States; or a governmental entity in the United States.

470 (7) The agency shall deny or revoke a specialty clinic
471 license if an applicant has been found guilty of, regardless of
472 adjudication, or entered a plea of nolo contendere or guilty to,
473 any felony involving dishonesty or making a false statement in
474 any jurisdiction within the preceding 10 years.

475 (8) The agency shall deny a specialty clinic license
476 application when any business entity or individual possessing an
477 ownership or pecuniary interest in the specialty clinic also
478 possessed an ownership or pecuniary interest, individually or
479 through any business entity, in any health care facility whose
480 license was revoked in any jurisdiction during the pendency of
481 that interest.

482 (9) The agency may not issue a specialty clinic license to
483 any applicant to whom the agency has sent notice that there is a
484 pending question as to whether one or more of the individuals
485 with an ownership of 5 percent or more or with a pecuniary
486 interest of \$5,000 or more in the clinic has a disqualifying
487 criminal record. The agency notice shall request the applicant to
488 submit any additional information necessary to resolve the
489 pending criminal background question within 21 days after receipt
490 of the notice. The agency shall deny a specialty clinic license
491 application when the applicant has failed to resolve a criminal
492 background screening issue pertaining to an individual who is
493 required to meet criminal background screening requirements of

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494 this part and the agency raised such background screening issue
495 by notice as set forth in this part.

496 Section 5. Section 400.9925, Florida Statutes, is amended
497 to read:

498 400.9925 Rulemaking authority; license fees.--

499 (1) The agency shall adopt rules necessary to administer
500 the clinic and specialty clinic administration, regulation, and
501 licensure program, including rules pursuant to this part and part
502 II of chapter 408, establishing the specific licensure
503 requirements, procedures, forms, and fees. It shall adopt rules
504 establishing a procedure for the biennial renewal of licenses.
505 The agency may issue initial licenses for less than the full 2-
506 year period by charging a prorated licensure fee and specifying a
507 different renewal date than would otherwise be required for
508 biennial licensure. The rules shall specify the expiration dates
509 of licenses, the process of tracking compliance with financial
510 responsibility requirements, and any other conditions of renewal
511 required by law or rule.

512 (2) The agency shall adopt rules specifying limitations on
513 the number of licensed clinics and specialty clinic and licensees
514 for which a medical director or a clinic director may assume
515 responsibility for purposes of this part. In determining the
516 quality of supervision a medical director or a clinic director
517 can provide, the agency shall consider the number of clinic or
518 specialty clinic employees, the clinic or specialty clinic
519 location, and the health care services provided by the clinic or
520 specialty clinic.

521 (3) In accordance with s. 408.805, an applicant or a
522 licensee shall pay a fee for each license application submitted

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523 | under this part, part II of chapter 408, and applicable rules.
524 | The amount of the fee shall be established by rule and may not
525 | exceed \$2,000.

526 | Section 6. Subsection (3) of section 400.993, Florida
527 | Statutes, is amended to read:

528 | 400.993 Unlicensed clinics; reporting.--

529 | (3) In addition to the requirements of part II of chapter
530 | 408, any health care provider who is aware of the operation of an
531 | unlicensed clinic or specialty clinic shall report that facility
532 | to the agency. Failure to report a clinic or specialty clinic
533 | that the provider knows or has reasonable cause to suspect is
534 | unlicensed shall be reported to the provider's licensing board.

535 | Section 7. Section 400.9935, Florida Statutes, is amended
536 | to read:

537 | 400.9935 Clinic responsibilities.--

538 | (1) Each clinic and specialty clinic shall appoint a
539 | medical director or clinic director who shall agree in writing to
540 | accept legal responsibility for the following activities on
541 | behalf of the clinic. The medical director or the clinic director
542 | shall:

543 | (a) Have signs identifying the medical director or clinic
544 | director posted in a conspicuous location within the clinic
545 | readily visible to all patients.

546 | (b) Ensure that all practitioners providing health care
547 | services or supplies to patients maintain a current active and
548 | unencumbered Florida license.

549 | (c) Review any patient referral contracts or agreements
550 | executed by the clinic.

551 | (d) Ensure that all health care practitioners at the clinic

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552 have active appropriate certification or licensure for the level
553 of care being provided.

554 (e) Ensure that all health care practitioners at the clinic
555 provide health care services in accordance with the requirements
556 of subsection (6).

557 (f) ~~(e)~~ Serve as the clinic records owner as defined in s.
558 456.057.

559 (g) ~~(f)~~ Ensure compliance with the recordkeeping, office
560 surgery, and adverse incident reporting requirements of chapter
561 456, the respective practice acts, and rules adopted under this
562 part and part II of chapter 408.

563 (h) ~~(g)~~ Conduct systematic reviews of clinic billings to
564 ensure that the billings are not fraudulent or unlawful. Upon
565 discovery of an unlawful charge, the medical director or clinic
566 director shall take immediate corrective action. If the clinic
567 performs only the technical component of magnetic resonance
568 imaging, static radiographs, computed tomography, or positron
569 emission tomography, and provides the professional interpretation
570 of such services, in a fixed facility that is accredited by the
571 Joint Commission on Accreditation of Healthcare Organizations or
572 the Accreditation Association for Ambulatory Health Care, and the
573 American College of Radiology; and if, in the preceding quarter,
574 the percentage of scans performed by that clinic which was billed
575 to all personal injury protection insurance carriers was less
576 than 15 percent, the chief financial officer of the clinic may,
577 in a written acknowledgment provided to the agency, assume the
578 responsibility for the conduct of the systematic reviews of
579 clinic billings to ensure that the billings are not fraudulent or
580 unlawful.

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581 (i) Serve in that capacity for no more than a maximum of
582 five health care clinics that have a cumulative total of no more
583 than 200 employees and persons under contract with the health
584 care clinic at a given time. A medical or clinic director may not
585 supervise a health care clinic more than 200 miles away from any
586 other health care clinic supervised by the same medical or clinic
587 director. The agency may allow for waivers to the limitations of
588 this paragraph upon a showing of good cause and a determination
589 by the agency that the medical director will be able to
590 adequately perform the requirements of this subsection.

591 (j)~~(h)~~ Not refer a patient to the clinic if the clinic
592 performs magnetic resonance imaging, static radiographs, computed
593 tomography, or positron emission tomography. The term "refer a
594 patient" means the referral of one or more patients of the
595 medical or clinical director or a member of the medical or
596 clinical director's group practice to the clinic for magnetic
597 resonance imaging, static radiographs, computed tomography, or
598 positron emission tomography. A medical director who is found to
599 violate this paragraph commits a felony of the third degree,
600 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

601 (2) Any contract to serve as a medical director or a clinic
602 director entered into or renewed by a physician or a licensed
603 health care practitioner in violation of this part is void as
604 contrary to public policy. This subsection shall apply to
605 contracts entered into or renewed on or after March 1, 2004.

606 (3) All charges or reimbursement claims made by or on
607 behalf of a clinic or specialty clinic that is required to be
608 licensed under this part, but that is not so licensed, or that is
609 otherwise operating in violation of this part, are unlawful

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610 charges, and therefore are noncompensable and unenforceable.

611 (4) In addition to the requirements of s. 408.812, any
612 person establishing, operating, or managing an unlicensed clinic
613 or specialty clinic otherwise required to be licensed under this
614 part or part II of chapter 408, or any person who knowingly files
615 a false or misleading license application or license renewal
616 application, or false or misleading information related to such
617 application or department rule, commits a felony of the third
618 degree, punishable as provided in s. 775.082, s. 775.083, or s.
619 775.084.

620 (5) Any licensed health care provider who violates this
621 part is subject to discipline in accordance with this chapter and
622 his or her respective practice act.

623 (6) Any person or entity providing health care services
624 which is not a clinic or specialty clinic, as defined under s.
625 400.9905, may voluntarily apply for a certificate of exemption
626 from licensure under its exempt status with the agency on a form
627 that sets forth its name or names and addresses, a statement of
628 the reasons why it cannot be defined as a clinic, and other
629 information deemed necessary by the agency. An exemption is not
630 transferable. The agency may charge an applicant for a
631 certificate of exemption in an amount equal to \$100 or the actual
632 cost of processing the certificate, whichever is less.

633 (7) (a) Each clinic or specialty clinic engaged in magnetic
634 resonance imaging services must be accredited by the Joint
635 Commission on Accreditation of Healthcare Organizations, the
636 American College of Radiology, or the Accreditation Association
637 for Ambulatory Health Care, within 1 year after licensure.
638 However, a clinic may request a single, 6-month extension if it

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639 provides evidence to the agency establishing that, for good cause
640 shown, such clinic can not be accredited within 1 year after
641 licensure, and that such accreditation will be completed within
642 the 6-month extension. After obtaining accreditation as required
643 by this subsection, each such clinic must maintain accreditation
644 as a condition of renewal of its license.

645 (b) The agency may deny the application or revoke the
646 license of any entity formed for the purpose of avoiding
647 compliance with the accreditation provisions of this subsection
648 and whose principals were previously principals of an entity that
649 was unable to meet the accreditation requirements within the
650 specified timeframes. The agency may adopt rules as to the
651 accreditation of magnetic resonance imaging clinics.

652 (8) The agency shall give full faith and credit pertaining
653 to any past variance and waiver granted to a magnetic resonance
654 imaging clinic from rule 64-2002, Florida Administrative Code, by
655 the Department of Health, until September 2004. After that date,
656 such clinic must request a variance and waiver from the agency
657 under s. 120.542.

658 (9) In addition to the requirements of part II of chapter
659 408, the clinic shall display a sign in a conspicuous location
660 within the clinic readily visible to all patients indicating
661 that, pursuant to s. 626.9892, the Department of Financial
662 Services may pay rewards of up to \$25,000 to persons providing
663 information leading to the arrest and conviction of persons
664 committing crimes investigated by the Division of Insurance Fraud
665 arising from violations of s. 440.105, s. 624.15, s. 626.9541, s.
666 626.989, or s. 817.234. An authorized employee of the Division of
667 Insurance Fraud may make unannounced inspections of a clinic

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668 licensed under this part as necessary to determine whether the
669 clinic is in compliance with this subsection. A licensed clinic
670 shall allow full and complete access to the premises to such
671 authorized employee of the division who makes an inspection to
672 determine compliance with this subsection.

673 (10) Every licensed specialty clinic shall file with the
674 agency no less frequently than annually, including concurrently
675 with the filing of any change of ownership application, upon
676 forms to be furnished by the agency, an audited report showing
677 the following information:

678 (a) The number of patients served by the specialty clinic
679 during the previous 12-month period, which report may exclude any
680 partial month for the month when the report was prepared;

681 (b) Total specialty clinic operating expenses;

682 (c) Gross patient charges by payor category, including
683 Medicare, Medicaid, county indigent programs, any other
684 governmental programs, private insurance, self-paying patients,
685 nonpaying patients and other payees;

686 (d) The cost of operation of the specialty clinic during
687 the previous 12-month period, excluding any partial month during
688 which time the report was prepared;

689 (e) Unless the specialty clinic can demonstrate that the
690 clinic already has furnished the required information regarding a
691 particular subject individual, the full name of any individual
692 who became an owner or became possessed of any pecuniary interest
693 in the subject clinic since the last report to the agency, along
694 with the disclosure of the information required by s. 400.9961(2)
695 as to such individual; and

696 (f) A current statement of the source of funds for payment

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697 of the costs of establishing the specialty clinic and for
698 sustaining the operation of the specialty clinic until its
699 operation produces a positive cash flow.

700 (11) Every licensee of a specialty clinic has a continuing
701 obligation to comply with this part and to report to the agency
702 any change of circumstance related to the clinic's continuing
703 compliance with this part. Such change of circumstance includes,
704 but is not limited to, any change in the ownership of the
705 specialty clinic, the addition of any individual or business
706 entity possessing a pecuniary interest in the specialty clinic,
707 the employment of any individual as a member of the specialty
708 clinic's staff who would be required to undergo a criminal
709 background screening if such individual had been an employee at
710 the time of the initial licensure, and any change in the medical
711 or clinic director. The clinic shall furnish the information
712 required about and of such individuals under this part and s.
713 400.991 within 30 days after the occurrence of such change of
714 circumstance.

715 Section 8. Section 400.995, Florida Statutes, is amended to
716 read:

717 400.995 Agency administrative penalties.--

718 (1) In addition to the requirements of part II of chapter
719 408, the agency may deny the application for a license renewal,
720 revoke and suspend the license, and impose administrative fines
721 of up to \$5,000 per violation for violations of ~~the requirements~~
722 ~~of~~ this part or rules of the agency. In determining if a penalty
723 is to be imposed and in fixing the amount of the fine, the agency
724 shall consider the following factors:

725 (a) The gravity of the violation, including the probability

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726 that death or serious physical or emotional harm to a patient
727 will result or has resulted, the severity of the action or
728 potential harm, and the extent to which ~~the provisions of the~~
729 applicable laws or rules were violated.

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

732 (c) Any previous violations.

733 (d) The financial benefit to the clinic or specialty clinic
734 of committing or continuing the violation.

735 (2) Each day of continuing violation after the date fixed
736 for termination of the violation, as ordered by the agency,
737 constitutes an additional, separate, and distinct violation.

738 (3) Any action taken to correct a violation shall be
739 documented in writing by the owner, medical director, or clinic
740 director of the clinic or specialty clinic and verified through
741 followup visits by agency personnel. The agency may impose a fine
742 and, in the case of an owner-operated clinic or specialty clinic,
743 revoke or deny a clinic's license when a clinic medical director
744 or clinic director knowingly misrepresents actions taken to
745 correct a violation.

746 (4) Any licensed clinic or specialty clinic whose owner,
747 medical director, or clinic director concurrently operates an
748 unlicensed clinic shall be subject to an administrative fine of
749 \$5,000 per day.

750 (5) Any clinic or specialty clinic whose owner fails to
751 apply for a change-of-ownership license in accordance with s.
752 400.992 and operates the clinic under the new ownership is
753 subject to a fine of \$5,000.

754 (6) The agency, as an alternative to or in conjunction with

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755 an administrative action against a clinic or specialty clinic for
756 violations of this part and adopted rules, shall make a
757 reasonable attempt to discuss each violation and recommended
758 corrective action with the owner, medical director, or clinic
759 director of the clinic or specialty clinic, prior to written
760 notification. The agency, instead of fixing a period within which
761 the clinic or specialty clinic shall enter into compliance with
762 standards, may request a plan of corrective action from the
763 clinic or specialty clinic which demonstrates a good faith effort
764 to remedy each violation by a specific date, subject to the
765 approval of the agency.

766 Section 9. Section 400.996, Florida Statutes, is created to
767 read:

768 400.996 Specialty clinics; complaints; audits; referrals.--

769 (1) The agency shall receive, document, and process
770 complaints about specialty clinics. Upon receipt of any complaint
771 that asserts the existence of facts evidencing possible billing
772 fraud by a specialty clinic or by any employee of a specialty
773 clinic, the agency shall request the complainant to make such
774 assertions by sworn affidavit.

775 (2) Upon receipt of any sworn affidavit that asserts the
776 existence of facts evidencing possible billing fraud by a
777 specialty clinic or any of its employees, the agency shall refer
778 the complaint to the Office of Fiscal Integrity within the
779 Department of Financial Services.

780 (3) The Department of Financial Services shall report
781 findings to the agency for any appropriate licensure action. Such
782 report shall include a statement of facts as determined by the
783 Department of Financial Services to exist, specifically with

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784 regard to the possible violations of licensure requirements. If
785 during an investigation the department has reason to believe that
786 any criminal law of this state has or may have been violated, the
787 department shall refer such investigation to appropriate
788 prosecutorial agencies and shall provide investigative assistance
789 to those agencies as required.

790 (4) The investigating authority and the agency shall
791 cooperate with each other with respect to preparing a record and
792 sharing information from which the agency may determine if any
793 action for sanctions under this part by the agency is warranted.

794 (5) Any person submitting a sworn complaint that initiates
795 a complaint investigation pursuant to this section, which sworn
796 complaint is determined to be totally without any factual basis
797 to support the assertions made in the complaint that facts
798 existed evidencing possible fraudulent practices by a specialty
799 clinic or any of its employees, shall be guilty of a misdemeanor
800 of the first degree, punishable as provided in s. 775.082 or s.
801 775.083.

802 (6) The Office of Fiscal Integrity within the Department of
803 Financial Services shall conduct unannounced reviews,
804 investigations, analyses, and audits to investigate complaints
805 and, as necessary, to determine whether specialty clinic billings
806 are fraudulent or unlawful. The Department of Financial Services
807 is expressly authorized to enter upon the premises of the clinic
808 during regular business hours and demand and immediately secure
809 copies of billing and other records of the clinic that will
810 enable the Department of Financial Services to investigate
811 complaints or determine whether specialty clinic billings are
812 fraudulent or unlawful.

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813 (7) A licensed specialty clinic shall allow full, complete,
814 and immediate access to the premises and to billing records or
815 information to any such officer or employee who conducts a
816 review, investigation, analysis, or audit to determine compliance
817 with this part and with applicable rules. Failure to allow full,
818 complete, and immediate access to the premises and to billing
819 records or information to any representative of the agency or
820 Department of Financial Services who attempts to conduct a
821 review, investigation, analysis, or audit to determine compliance
822 with this part constitutes a ground for emergency suspension of
823 the license by the agency pursuant to s. 120.60(6).

824 (8) In addition to any administrative fines imposed, the
825 agency may assess a fee equal to the cost of conducting any
826 review, investigation, analysis, or audit performed by the agency
827 or the department.

828 (9) All investigators designated by the Chief Financial
829 Officer to perform duties under this part and who are certified
830 under s. 943.1395 are law enforcement officers of the state. Such
831 investigators have the authority to conduct criminal
832 investigations, bear arms, make arrests, and apply for, serve,
833 and execute search warrants, arrest warrants, capias, and other
834 process throughout the state pertaining to fraud investigations
835 under this section.

836 Section 10. Paragraph (ii) is added to subsection (1) of
837 section 456.072, Florida Statutes, to read:

838 456.072 Grounds for discipline; penalties; enforcement.--

839 (1) The following acts shall constitute grounds for which
840 the disciplinary actions specified in subsection (2) may be
841 taken:

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842 (ii) Intentionally providing false information on an
843 application for a certificate of exemption from clinic licensure
844 under part XIII of chapter 400.

845 Section 11. Florida Barbara B. Lumpkin Center for Nursing
846 designated; Department of Health to erect suitable markers.--

847 (1) The Florida Center for Nursing, created by s. 464.0195,
848 Florida Statutes, and located in Orlando is designated as the
849 "Florida Barbara B. Lumpkin Center for Nursing."

850 (2) The Department of Health is directed to erect suitable
851 markers designating the Florida Barbara B. Lumpkin Center for
852 Nursing as described in subsection (1).

853 Section 12. The sums of \$212,528 in recurring funds from
854 the Health Care Trust Fund, and \$25,347 in nonrecurring funds
855 from the Health Care Trust Fund are appropriated to the Agency
856 for Health Care Administration and four full time equivalent
857 positions and associated salary rate of 134,455 are authorized,
858 for the 2008-2009 fiscal year for the purpose of implementing the
859 provisions of this act.

860 Section 13. For the 2008-2009 fiscal year, the sums of
861 \$510,276 in recurring funds and \$111,455 in nonrecurring funds
862 are appropriated from the Insurance Regulatory Trust Fund of the
863 Department of Financial Services to the Division of Insurance
864 Fraud within the department for the purpose of providing a new
865 fraud unit within the division consisting of six sworn law
866 enforcement officers, one non-sworn investigator, one crime
867 analyst, and one clerical position. A total of nine full-time
868 equivalent positions and associated salary rate of 381,500 are
869 authorized. This appropriation is for the purposes provided in s.
870 626.989, Florida Statutes.

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871 Section 14. For the 2008-2009 fiscal year, the sums of
872 \$415,291 in recurring funds and \$52,430 in nonrecurring funds are
873 appropriated from the Insurance Regulatory Trust Fund of the
874 Department of Financial Services to the Division of Insurance
875 Fraud within the department and 10 full-time equivalent positions
876 and associated salary rate of 342,500 are authorized. This
877 appropriation is for the purposes provided in s. 626.989, Florida
878 Statutes.

879 Section 15. Effective January 1, 2009, section 627.730,
880 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739,
881 627.7401, 627.7403, and 627.7405, Florida Statutes, constituting
882 the Florida Motor Vehicle No-Fault Law, are repealed, unless
883 reviewed and reenacted by the Legislature before that date.

884 Section 16. Section 19 of chapter 2003-411, Laws of
885 Florida, is repealed.

886 Section 17. This act shall take effect October 1, 2008.