

1 A bill to be entitled
2 An act relating to health care; amending s. 400.990, F.S.;
3 providing additional legislative findings; amending s.
4 400.9905, F.S.; redefining the term "clinic" for purposes
5 of the Health Care Clinic Act to include certain
6 additional providers; defining the terms "fraud" and
7 "infusion therapy"; defining the term "specialty clinic,"
8 to include certain facilities owned by publicly traded
9 corporations excluded by the definition of the term
10 "clinic"; amending s. 400.991, F.S.; requiring specialty
11 clinics to be subject to licensure requirements; requiring
12 additional persons to be subject to background screening;
13 revising certain requirements for applying for licensure
14 as a health care clinic; creating additional requirements
15 for applying for licensure as a specialty clinic; creating
16 s. 400.9914, F.S.; providing additional grounds under
17 which the Agency for Health Care Administration is
18 required to deny or revoke a license due to a finding of
19 guilt for committing a felony; providing grounds for the
20 denial of specialty clinic licensure; amending s.
21 400.9915, F.S.; providing additional grounds for an
22 emergency suspension of a license; creating s. 400.9921,
23 F.S.; providing additional requirements for license
24 renewal and transfer of ownership; amending s. 400.9925,
25 F.S.; authorizing the agency to adopt rules for the
26 administration and licensing of specialty clinics;
27 amending s. 400.993, F.S.; including specialty clinics
28 within provisions regarding the reporting of unlicensed

29 | clinics; amending s. 400.9935, F.S.; including specialty
30 | clinics within provisions specifying clinic
31 | responsibilities; revising the responsibilities of the
32 | medical director and the clinical director; requiring all
33 | persons providing health care services to individuals in a
34 | specialty clinic to comply with the licensure laws and
35 | rules under which that person is licensed; providing for a
36 | certificate of exemption from licensure as a clinic to
37 | expire within a specified period; providing the
38 | application procedures for a certificate of exemption;
39 | providing a fee; providing for renewal of the certificate
40 | of exemption; providing that it is a third-degree felony
41 | for an applicant to submit fraudulent or material and
42 | misleading information to the agency; providing grounds
43 | for the denial, withdrawal, or emergency suspension of a
44 | certificate of exemption by the Agency for Health Care
45 | Administration; requiring specialty clinics to display
46 | signs containing certain information relating to insurance
47 | fraud; authorizing compliance inspections by the Division
48 | of Insurance Fraud; requiring clinics to allow inspection
49 | access; requiring a specialty clinic to file an audited
50 | report; providing requirements for the audited report;
51 | requiring a specialty clinic to maintain compliance with
52 | part X of ch. 400, F.S.; amending s. 400.995, F.S.;
53 | authorizing the agency to impose administrative penalties
54 | against a specialty clinic; authorizing the agency to
55 | request a plan of corrective action from the clinic or
56 | specialty clinic; creating s. 400.996, F.S.; creating a

57 process whereby the agency receives, documents, and
58 processes complaints about specialty clinics; requiring
59 the agency to request that complaints regarding billing
60 fraud by a specialty clinic be made by sworn affidavit;
61 requiring the agency to refer to the Office of Fiscal
62 Integrity within the Department of Financial Services any
63 sworn affidavit asserting billing fraud by a specialty
64 clinic; requiring the department to report findings
65 regarding billing fraud by a specialty clinic to the
66 agency; requiring the department to refer an investigation
67 to prosecutorial authorities and provide investigative
68 assistance under certain circumstances; providing that it
69 is a first-degree misdemeanor to submit an affidavit
70 asserting billing fraud by a specialty clinic which is
71 without any factual basis; allowing the department to
72 conduct unannounced reviews, investigations, analyses, and
73 audits to investigate complaints of billing fraud by a
74 specialty clinic; authorizing the department to enter upon
75 the premises of a specialty clinic and immediately secure
76 copies of certain documents; requiring a specialty clinic
77 to allow full and immediate access to the premises and
78 records of the clinic to a department officer or employee
79 under s. 400.996, F.S.; providing that failure to provide
80 such access is a ground for emergency suspension of the
81 license of the specialty clinic; permitting the agency to
82 assess a fee against a specialty clinic equal to the cost
83 of conducting a review, investigation, analysis, or audit
84 performed by the agency or the department; providing that

85 | all investigators designated by the Chief Financial
 86 | Officer to perform duties under part X of ch. 400, F.S.,
 87 | and certified under s. 943.1395, F.S., are law enforcement
 88 | officers of the state; amending s. 408.802, F.S.;
 89 | providing that specialty clinics are subject to part X of
 90 | ch. 400, F.S.; amending s. 408.820, F.S.; providing that
 91 | specialty clinics are exempt from s. 408.810(6), (7), and
 92 | (10), F.S.; amending s. 456.072, F.S.; providing that
 93 | intentionally placing false information in an application
 94 | for a certificate of exemption from clinic licensure
 95 | constitutes grounds for disciplinary action; amending ss.
 96 | 627.732 and 627.736, F.S.; conforming cross-references;
 97 | designating the Florida Center for Nursing as the "Florida
 98 | Barbara B. Lumpkin Center for Nursing"; directing the
 99 | Department of Health to erect suitable markers;
 100 | authorizing additional positions and providing an
 101 | appropriation; providing an effective date.

102

103 | Be It Enacted by the Legislature of the State of Florida:

104

105 | Section 1. Section 400.990, Florida Statutes, is amended
 106 | to read:

107 | 400.990 Short title; legislative findings.—

108 | (1) This part, consisting of ss. 400.990-400.996 ~~ss.~~
 109 | ~~400.990-400.995~~, may be cited as the "Health Care Clinic Act."

110 | (2) The Legislature finds that the regulation of health
 111 | care clinics must be strengthened to prevent significant cost
 112 | and harm to consumers.

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113 (3) The Legislature further finds the additional
114 regulation of specialty health care clinics is necessary to
115 prevent significant fraudulent practices in the provision of
116 infusion therapy services in this state.

117 (4) The purpose of this part is to provide for the
118 licensure, establishment, and enforcement of basic standards for
119 health care clinics and to provide administrative oversight by
120 the Agency for Health Care Administration.

121 Section 2. Subsections (5) through (7) of section
122 400.9905, Florida Statutes, are renumbered as subsections (7)
123 through (9), respectively, paragraphs (f), (g), and (l) of
124 subsection (4) are amended, new subsections (5), (6), and (10)
125 are added to that section, to read:

126 400.9905 Definitions.—

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

133 (f) A sole proprietorship, group practice, partnership, ~~or~~
134 corporation, or other legal entity that provides health care
135 services by physicians and physician assistants licensed under
136 chapter 458, chapter 459, chapter 460, chapter 461, or chapter
137 466 covered by s. 627.419, that is directly supervised by one or
138 more of such physicians or physician assistants, and that is
139 wholly owned by one or more of those physicians or physician
140 assistants or by a physician or physician assistant and the

141 spouse, parent, child, or sibling of that physician or physician
 142 assistant.

143 (g) A sole proprietorship, group practice, partnership, ~~or~~
 144 corporation, or other legal entity that provides health care
 145 services by licensed health care practitioners under chapter
 146 457, ~~chapter 458, chapter 459, chapter 460, chapter 461,~~ chapter
 147 462, chapter 463, ~~chapter 466,~~ chapter 467, chapter 480, chapter
 148 484, chapter 486, chapter 490, chapter 491, or part I, part III,
 149 part X, part XIII, or part XIV of chapter 468, or s. 464.012,
 150 which entities are wholly owned by one or more licensed health
 151 care practitioners, or the licensed health care practitioners
 152 set forth in this paragraph and the spouse, parent, child, or
 153 sibling of a licensed health care practitioner, so long as one
 154 of the owners who is a licensed health care practitioner is
 155 supervising the health care services ~~business activities~~ and is
 156 legally responsible for the entity's compliance with all federal
 157 and state laws. However, the a health care services provided may
 158 not exceed the scope of the licensed owner's health care
 159 ~~practitioner may not supervise services beyond the scope of the~~
 160 ~~practitioner's~~ license, except that, for the purposes of this
 161 part, a clinic owned by a licensee in s. 456.053(3)(b) that
 162 provides only services authorized pursuant to s. 456.053(3)(b)
 163 may be supervised by a licensee specified in s. 456.053(3)(b).

164 (l) ~~Orthotic or prosthetic~~ Clinical facilities that are a
 165 publicly traded corporation or that are wholly owned, directly
 166 or indirectly, by a publicly traded corporation. As used in this
 167 paragraph, a publicly traded corporation is a corporation that
 168 issues securities traded on an exchange registered with the

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169 United States Securities and Exchange Commission as a national
170 securities exchange.

171 (5) "Fraud" means deception or misrepresentation made by a
172 person or business entity with the intent that the deception
173 will likely result in an unauthorized benefit to that person or
174 business entity or to another person. The term includes any act
175 that constitutes fraud under applicable federal or state law.

176 (6) "Infusion therapy" includes, but is not limited to,
177 the therapeutic infusion of substances into, or injection of
178 substances through, the venous peripheral system and consists of
179 activities that include observing, initiating, monitoring,
180 discontinuing, maintaining, regulating, adjusting, documenting,
181 planning, intervening, and evaluating. The term includes the
182 administration of nutrition, antibiotic therapy, and fluid and
183 electrolyte repletion.

184 (10) "Specialty clinic" means a clinic, as defined in
185 subsection (4), and includes those entities exempt under
186 subsection (4) that are not licensed as a home health agency
187 that provides infusion therapy services to treat conditions
188 caused by or related to HIV or AIDS to outpatients who remain
189 less than 24 hours at the facility or to patients who receive
190 such services where they reside. The term does not include:

191 (a) Entities licensed under part II or part III;

192 (b) Entities licensed under part IV that provide infusion
193 therapy to patients only in the home or residence of the
194 patient; or

195 (c) Entities licensed under chapter 395.

196 Section 3. Section 400.991, Florida Statutes, is amended

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197 to read:

198 400.991 License requirements; background screenings;
199 prohibitions.—

200 (1) (a) The requirements of part II of chapter 408 apply to
201 the provision of services that require licensure pursuant to
202 this part and part II of chapter 408 and to entities licensed by
203 or applying for such licensure from the agency pursuant to this
204 part. A license issued by the agency is required in order to
205 operate a clinic or a specialty clinic in this state. Each
206 clinic and specialty clinic location shall be licensed
207 separately regardless of whether the clinic or specialty clinic
208 is operated under the same business name or management as
209 another clinic or specialty clinic.

210 (b) Each mobile clinic and specialty clinic must obtain a
211 separate health care clinic license and must provide to the
212 agency, at least quarterly, its projected street location to
213 enable the agency to locate and inspect such clinic or specialty
214 clinic. A portable equipment provider must obtain a health care
215 clinic license for a single administrative office and is not
216 required to submit quarterly projected street locations.

217 (c) A specialty clinic operating without a specialty
218 clinic license on or before January 1, 2011, shall be given
219 until July 2, 2011, to obtain a specialty clinic license.

220 (2) The initial clinic license application and the initial
221 specialty clinic license application shall be filed with the
222 agency by all clinics, as defined in s. 400.9905, on or before
223 July 1, 2004. A clinic license and a specialty clinic license
224 must be renewed biennially.

225 (3) (a) The application shall contain information that
 226 includes, but ~~is need~~ not ~~be~~ limited to, information pertaining
 227 to the name, residence and business address, phone number,
 228 social security number, and license number of the medical or
 229 clinic director of the licensed medical providers employed or
 230 under contract with the clinic.

231 (b) Any person or entity that has a pecuniary interest in
 232 a clinic who may or may not own stock or an equivalent interest
 233 in the clinic, but who has control over, or the authority to
 234 approve, directly or indirectly, clinic billing, policy,
 235 business activities, or personnel decisions, including, but not
 236 limited to, contracted or employed third-party billing persons
 237 or entities, managers, management companies, and persons and
 238 entities that, directly or indirectly, lend, give, or make a
 239 gift of money of any denomination or anything of value exceeding
 240 an aggregate of \$5,000 for clinic use, with or without an
 241 expectation of a return of the money or thing of value and
 242 regardless of profit motive, is subject to background screening
 243 requirements under this part.

244 (c) The agency may adopt rules to administer this
 245 subsection.

246 (4) An application for a specialty clinic must contain, in
 247 addition to the information required in subsection (3) and s.
 248 408.806:

249 (a) The correct business name of each business entity and
 250 full name of each individual holding any ownership interest of 5
 251 percent or more, or any pecuniary interest of \$5,000 or more, in
 252 any legal entity that owns or operates any specialty clinic

253 seeking licensure, whether such ownership or pecuniary interest
254 arose out of a contract, loan, gift, investment, inheritance, or
255 any other source. Individual possession of an ownership or
256 pecuniary interest in any subject specialty clinic includes, but
257 is not limited to, a direct or indirect interest in:

258 1. The business operation, equipment, or legend
259 pharmaceuticals used in the clinic;

260 2. The premises in which the clinic provides its services;
261 or

262 3. Any legal entity that owns any such interest, directly
263 or indirectly, in the business operation of the clinic; the
264 equipment used in providing infusion therapy services at the
265 clinic; the legend pharmaceuticals used at the clinic; or the
266 premises in which the clinic provides its services.

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

272 (c) On a form furnished by the agency, a sworn, notarized
273 statement by each business entity and individual that holds any
274 ownership interest of 5 percent or more, or any pecuniary
275 interest of \$5,000 or more, in the subject specialty clinic
276 which discloses the nature and degree of each such ownership or
277 pecuniary interest and discloses the source of funds which gave
278 rise to each such ownership or pecuniary interest.

279 (d) On a form furnished by the agency, a sworn, notarized
280 statement by each business entity and individual that holds any

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281 ownership interest of 5 percent or more, or any pecuniary
282 interest of \$5,000 or more, in the subject specialty clinic
283 which discloses whether he or she has been an owner or part
284 owner, individually or through any business entity, of any
285 business entity whose health care license has been revoked or
286 suspended in any jurisdiction.

287 (e) On a form furnished by the agency, an estimate of the
288 costs for establishing the specialty clinic and the source of
289 funds for payment of those costs and for sustaining the
290 operation of the clinic until its operation produces a positive
291 cash flow.

292
293 For purposes of this subsection, the term "ownership" or
294 "pecuniary interest" does not include an individual whose
295 interest in a specialty clinic arises only out of that
296 individual's interest in a lending company, insurance company,
297 or banking institution licensed by this state or any other state
298 of the United States; a company regularly trading on a national
299 stock exchange of the United States; or a governmental entity in
300 the United States.

301 (5)-(4) In addition to the requirements of part II of
302 chapter 408, the applicant must file with the application
303 satisfactory proof that the clinic or specialty clinic is in
304 compliance with this part and applicable rules, including:

305 (a) A listing of services to be provided either directly
306 by the applicant or through contractual arrangements with
307 existing providers;

308 (b) The number and discipline of each professional staff

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309 member to be employed; and

310 (c) Proof of financial ability to operate as required
311 under s. 408.810(8). As an alternative to submitting proof of
312 financial ability to operate as required under s. 408.810(8),
313 the applicant may file a surety bond of at least \$500,000 which
314 guarantees that the clinic or specialty clinic will act in full
315 conformity with all legal requirements for operating a clinic,
316 payable to the agency. The agency may adopt rules to specify
317 related requirements for such surety bond.

318 ~~(6)(5)~~ Each applicant for licensure shall comply with the
319 following requirements:

320 (a) As used in this subsection, the term "applicant" means
321 an individual ~~individuals~~ owning or controlling, directly or
322 indirectly, 5 percent or more of an interest in a clinic or an
323 individual owning or controlling, directly or indirectly, any
324 interest in a specialty clinic; the medical or clinic director,
325 or a similarly titled person who is responsible for the day-to-
326 day operation of the licensed clinic; the financial officer or
327 similarly titled individual who is responsible for the financial
328 operation of the clinic; and licensed health care practitioners
329 at the clinic.

330 (b) Upon receipt of a completed, signed, and dated
331 application, the agency shall require background screening of
332 the applicant, in accordance with the level 2 standards for
333 screening set forth in paragraph (d) ~~chapter 435~~. Proof of
334 compliance with the level 2 background screening requirements of
335 paragraph (d) ~~chapter 435~~ which has been submitted within the
336 previous 5 years in compliance with the ~~any other~~ health care

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337 clinic licensure requirements of this part ~~state~~ is acceptable
338 in fulfillment of this paragraph. Applicants who own less than
339 10 percent of a health care clinic are not required to submit
340 fingerprints under this section.

341 (c) Each applicant must submit to the agency, with the
342 application, a description and explanation of any exclusions,
343 permanent suspensions, or terminations of an applicant from the
344 Medicare or Medicaid programs. Proof of compliance with the
345 requirements for disclosure of ownership and controlling ~~control~~
346 interest under the Medicaid or Medicare programs may be accepted
347 in lieu of this submission. The description and explanation may
348 indicate whether such exclusions, suspensions, or terminations
349 were voluntary or not voluntary on the part of the applicant.
350 The agency may deny or revoke licensure based on information
351 received under this paragraph.

352 (d) A license may not be granted to a clinic if the
353 applicant, or a person or entity identified in paragraph (3) (b),
354 has been found guilty of, regardless of adjudication, or has
355 entered a plea of nolo contendere or guilty to, any offense
356 prohibited under the level 2 standards for screening set forth
357 in chapter 435; any felony under chapter 400, chapter 408,
358 chapter 409, chapter 440, chapter 624, chapter 626, chapter 627,
359 chapter 812, chapter 817, chapter 831, chapter 837, chapter 838,
360 chapter 895, or chapter 896; or any substantially comparable
361 offense or crime of another state or of the United States, if a
362 felony in that jurisdiction, within the past 10 years. Each
363 person required to provide background screening shall disclose
364 to the agency any arrest for a crime for which a court

365 disposition other than dismissal has been made within the past
 366 10 years. Failure to provide such information is a material
 367 omission in the application process, ~~or a violation of insurance~~
 368 ~~fraud under s. 817.234, within the past 5 years. If the~~
 369 ~~applicant has been convicted of an offense prohibited under the~~
 370 ~~level 2 standards or insurance fraud in any jurisdiction, the~~
 371 ~~applicant must show that his or her civil rights have been~~
 372 ~~restored prior to submitting an application.~~

373 (e) Each applicant that performs the technical component
 374 of magnetic resonance imaging, static radiographs, computed
 375 tomography, or positron emission tomography, and also provides
 376 the professional components of such services through an employee
 377 or independent contractor, must provide to the agency on a form
 378 provided by the agency, the name and address of the clinic, the
 379 serial or operating number of each magnetic resonance imaging,
 380 static radiograph, computed tomography, and positron emission
 381 tomography machine, the name of the manufacturer of the machine,
 382 and such other information as required by the agency to identify
 383 the machine. The information must be provided to the agency upon
 384 renewal of the clinic's licensure and within 30 days after a
 385 clinic begins using a machine for which it has not provided the
 386 information to the agency.

387 Section 4. Section 400.9914, Florida Statutes, is created
 388 to read:

389 400.9914 Revocation or denial of a specialty clinic
 390 license.—In addition to the standards provided in s. 408.831,
 391 the agency:

392 (1) Shall deny or revoke a specialty clinic license if an

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393 applicant has been found guilty of, regardless of adjudication,
394 or entered a plea of nolo contendere or guilty to, any felony
395 involving dishonesty or making a false statement in any
396 jurisdiction within the preceding 10 years.

397 (2) Shall deny a specialty clinic license application when
398 any business entity or individual possessing an ownership or
399 pecuniary interest in the specialty clinic also possessed an
400 ownership or pecuniary interest, individually or through any
401 business entity, in any health care facility whose license was
402 revoked in any jurisdiction during the pendency of that
403 interest.

404 (3) May not issue a specialty clinic license to any
405 applicant to whom the agency has sent notice that there is a
406 pending question as to whether one or more of the individuals
407 having an ownership of 5 percent or more or a pecuniary interest
408 of \$5,000 or more in the clinic has a disqualifying criminal
409 record. The agency notice shall request the applicant to submit
410 any additional information necessary to resolve the pending
411 criminal background question within 21 days after receipt of the
412 notice. The agency shall deny a specialty clinic license
413 application if the applicant fails to resolve a criminal
414 background screening issue pertaining to an individual who is
415 required to meet the criminal background screening requirements
416 of this part and the agency raised such background screening
417 issue by providing notice pursuant to this part.

418 Section 5. Section 400.9915, Florida Statutes, is amended
419 to read:

420 400.9915 Emergency suspension; costs.—

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421 (1) Failure by a clinic or specialty clinic licensed under
422 this part to allow full and complete access to the premises and
423 to billing records or information to any representative of the
424 agency who makes a request to inspect the clinic or specialty
425 clinic to determine compliance with this part or failure by a
426 clinic or specialty clinic to employ a qualified medical
427 director or clinic director constitutes a ground for emergency
428 suspension of the license by the agency pursuant to s. 408.814.

429 (2) In addition to any administrative fines imposed
430 pursuant to this part or part II of chapter 408, the agency may
431 assess a fee equal to the cost of conducting a complaint
432 investigation.

433 Section 6. Section 400.9921, Florida Statutes, is created
434 to read:

435 400.9921 License renewal; transfer of ownership.—In
436 addition to the requirements set forth in ss. 408.806 and
437 408.807:

438 (1) An application for license renewal must contain
439 information as required by the agency.

440 (2) The clinic or specialty clinic must file with the
441 renewal application satisfactory proof that it is in compliance
442 with this part and applicable rules. If there is evidence of
443 financial instability, the clinic or specialty clinic must
444 submit satisfactory proof of its financial ability to comply
445 with the requirements of this part.

446 (3) An application for change of ownership of a clinic or
447 specialty clinic is required only when 45 percent or more of the
448 ownership, voting shares, or controlling interest of a clinic or

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449 specialty clinic is transferred or assigned, including the final
450 transfer or assignment of multiple transfers or assignments over
451 a 2-year period which cumulatively total 45 percent or greater.

452 (4) The license may not be sold, leased, assigned, or
453 otherwise transferred, voluntarily or involuntarily, and is
454 valid only for the clinic or specialty clinic owners and
455 location for which the license was originally issued.

456 Section 7. Section 400.9925, Florida Statutes, is amended
457 to read:

458 400.9925 Rulemaking authority; license fees.—

459 (1) The agency shall adopt rules necessary to administer
460 the clinic and specialty clinic administration, regulation, and
461 licensure program, including rules pursuant to this part and
462 part II of chapter 408, establishing the specific licensure
463 requirements, procedures, forms, and fees. It shall adopt rules
464 establishing a procedure for the biennial renewal of licenses.
465 The agency may issue initial licenses for less than the full 2-
466 year period by charging a prorated licensure fee and specifying
467 a different renewal date than would otherwise be required for
468 biennial licensure. The rules shall specify the expiration dates
469 of licenses, the process of tracking compliance with financial
470 responsibility requirements, and any other conditions of renewal
471 required by law or rule.

472 (2) The agency shall adopt rules specifying limitations on
473 the number of licensed clinics and specialty clinics and
474 licensees for which a medical director or a clinic director may
475 assume responsibility for purposes of this part. In determining
476 the quality of supervision a medical director or a clinic

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477 director can provide, the agency shall consider the number of
478 clinic or specialty clinic employees, the clinic location or the
479 specialty clinic location, and the health care services provided
480 by the clinic or specialty clinic.

481 (3) In accordance with s. 408.805, an applicant or a
482 licensee shall pay a fee for each license application submitted
483 under this part, part II of chapter 408, and applicable rules.
484 The amount of the fee shall be established by rule and may not
485 exceed \$2,000.

486 Section 8. Subsection (3) of section 400.993, Florida
487 Statutes, is amended to read:

488 400.993 Unlicensed clinics; reporting.—

489 (3) In addition to the requirements of part II of chapter
490 408, any health care provider who is aware of the operation of
491 an unlicensed clinic or specialty clinic shall report that
492 facility to the agency. Failure to report a clinic or specialty
493 clinic that the provider knows or has reasonable cause to
494 suspect is unlicensed shall be reported to the provider's
495 licensing board.

496 Section 9. Subsections (1), (6), and (9) of section
497 400.9935, Florida Statutes, are amended, and subsections (10)
498 and (11) are added to that section, to read:

499 400.9935 Clinic and specialty clinic responsibilities.—

500 (1) Each clinic and specialty clinic shall appoint a
501 medical director or clinic director who shall agree in writing
502 to accept legal responsibility for the following activities on
503 behalf of the clinic or specialty clinic. The medical director
504 or the clinic director shall:

505 (a) Have signs identifying the medical director or clinic
506 director posted in a conspicuous location within the clinic
507 readily visible to all patients.

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

511 (c) Review any patient referral contracts or agreements
512 executed by the clinic.

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

516 (e) Serve as the clinic records owner as defined in s.
517 456.057.

518 (f) Ensure compliance with the recordkeeping, office
519 surgery, and adverse incident reporting requirements of chapter
520 456, the respective practice acts, and rules adopted under this
521 part and part II of chapter 408.

522 (g) Conduct systematic reviews of clinic billings to
523 ensure that the billings are not fraudulent or unlawful. Upon
524 discovery of an unlawful charge, the medical director or clinic
525 director shall take immediate corrective action. If the clinic
526 performs only the technical component of magnetic resonance
527 imaging, static radiographs, computed tomography, or positron
528 emission tomography, and provides the professional
529 interpretation of such services, in a fixed facility that is
530 accredited by the Joint Commission on Accreditation of
531 Healthcare Organizations or the Accreditation Association for
532 Ambulatory Health Care, and the American College of Radiology;

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533 and if, in the preceding quarter, the percentage of scans
534 performed by that clinic which was billed to all personal injury
535 protection insurance carriers was less than 15 percent, the
536 chief financial officer of the clinic may, in a written
537 acknowledgment provided to the agency, assume the responsibility
538 for the conduct of the systematic reviews of clinic billings to
539 ensure that the billings are not fraudulent or unlawful.

540 (h) Not refer a patient to the clinic if the clinic
541 performs magnetic resonance imaging, static radiographs,
542 computed tomography, or positron emission tomography. The term
543 "refer a patient" means the referral of one or more patients of
544 the medical or clinical director or a member of the medical or
545 clinical director's group practice to the clinic for magnetic
546 resonance imaging, static radiographs, computed tomography, or
547 positron emission tomography. A medical director who is found to
548 violate this paragraph commits a felony of the third degree,
549 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

550 (i) Serve as medical or clinic director for no more than a
551 maximum of five health care clinics that have a cumulative total
552 of no more than 200 employees and persons under contract with
553 the health care clinic at a given time. A medical or clinic
554 director may not supervise a health care clinic more than 200
555 miles away from any other health care clinic supervised by the
556 same medical or clinic director. The agency may allow a waiver
557 of the limitations of this paragraph upon a showing of good
558 cause and a determination by the agency that the medical or
559 clinic director is able to adequately perform the duties
560 required under this subsection.

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561 (6) Any person or entity providing health care services
562 which is not a clinic or specialty clinic, as defined under s.
563 400.9905, may voluntarily apply for a certificate of exemption
564 from licensure under its exempt status. Other than certificates
565 of exemptions granted pursuant to the exemption under s.
566 400.9905(4)(f), certificates of exemption shall expire after 2
567 years and may be renewed with the agency on a form that sets
568 forth its name or names and addresses, a statement of the
569 reasons why it cannot be defined as a clinic, and other
570 information deemed necessary by the agency. An exemption is not
571 transferable. The agency may charge an applicant for a
572 certificate of exemption in an amount equal to \$100 or the
573 actual cost of processing the certificate, whichever is less.

574 (a) The agency shall provide a form that requires the name
575 or names and addresses, a statement of the reasons why the
576 applicant is exempt from licensure as a health care clinic or
577 specialty clinic, and other information deemed necessary by the
578 agency. The signature on an application for a certificate of
579 exemption must be notarized and signed by persons having
580 knowledge of the truth of its contents. An exemption is not
581 transferable and is valid only for the reasons, location,
582 persons, and entity set forth on the application form. A person
583 or entity that claims an exemption under this part or that holds
584 a current certificate of exemption must be exempt from the
585 licensing provisions of this part at all times or such claim or
586 certificate is invalid from the date that such person or entity
587 is not exempt.

588 (b) The agency shall charge an applicant for a certificate

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589 of exemption a fee of \$100 to cover the cost of processing the
590 certificate or the actual cost of processing the certificate,
591 whichever is less.

592 (c) An application for the renewal of a certificate of
593 exemption must be submitted to the agency before the expiration
594 of the certificate of exemption. The agency may investigate any
595 applicant, person, or entity claiming an exemption for purposes
596 of determining compliance when a certificate of exemption is
597 sought. Authorized personnel of the agency shall have access to
598 the premises of any certificateholder, applicant, or specialty
599 clinic, other than a person or entity who is exempt pursuant to
600 s. 400.9905(4) (f), for the sole purpose of determining
601 compliance with an exemption under this part. The agency shall
602 have access to all billings and records. The agency may deny or
603 withdraw a certificate of exemption if a person or entity does
604 not qualify under this part.

605 (d) A certificate of exemption is considered withdrawn
606 when the agency determines that an exempt status cannot be
607 confirmed. The provisions applicable to the unlicensed operation
608 of a health care clinic or specialty clinic apply to any health
609 care provider that self-determines or claims an exemption or
610 that is issued a certificate of exemption if, in fact, such
611 clinic does not meet the exemption claimed.

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

616 (f) A response to a request in writing for additional

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617 information or clarification must be filed with the agency no
618 later than 21 days after receipt of the request or the
619 application shall be denied.

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

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

626 (i) The agency shall issue an emergency order of
627 suspension of a certificate of exemption when the agency finds
628 that the applicant has provided false or misleading material
629 information or omitted any material fact from the application
630 for a certificate of exemption which is permitted or required by
631 this part, or has submitted false or misleading information to
632 the agency when self-determining an exempt status and materially
633 misleading the agency as to such status.

634 (9) In addition to the requirements of part II of chapter
635 408, the clinic or specialty clinic shall display a sign in a
636 conspicuous location within the clinic or specialty clinic
637 readily visible to all patients indicating that, pursuant to s.
638 626.9892, the Department of Financial Services may pay rewards
639 of up to \$25,000 to persons providing information leading to the
640 arrest and conviction of persons committing crimes investigated
641 by the Division of Insurance Fraud arising from violations of s.
642 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234. An
643 authorized employee of the Division of Insurance Fraud may make
644 unannounced inspections of a clinic or specialty clinic licensed

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645 under this part as necessary to determine whether the clinic or
646 specialty clinic is in compliance with this subsection. A
647 licensed clinic or specialty clinic shall allow full and
648 complete access to the premises to such authorized employee of
649 the division who makes an inspection to determine compliance
650 with this subsection.

651 (10) In addition to the requirements set forth in s.
652 408.8065, every licensed specialty clinic shall annually file
653 with the agency, including concurrently with the filing of any
654 change of ownership application, upon forms to be furnished by
655 the agency, an audited report showing the following information:

656 (a) A report of the number of patients served by the
657 specialty clinic during the previous 12-month period. The report
658 may exclude any partial month for the month when the report was
659 prepared;

660 (b) Total specialty clinic operating expenses;

661 (c) Gross patient charges by payor category, including
662 Medicare, Medicaid, county indigent programs, any other
663 governmental programs, private insurance, self-paying patients,
664 nonpaying patients, and other payees;

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

668 (e) Unless the specialty clinic can demonstrate that the
669 clinic already has furnished the required information regarding
670 a particular subject individual, the full name of any individual
671 who became an owner or became possessed of any pecuniary
672 interest in the subject clinic since the last report to the

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673 agency, along with the disclosure of the information required by
674 s. 400.991 as to such individual; and

675 (f) A current statement of the source of funds for payment
676 of the costs of establishing the specialty clinic and for
677 sustaining the operation of the specialty clinic until its
678 operation produces a positive cash flow.

679 (11) Each licensee of a specialty clinic has a continuing
680 obligation to comply with this part and to report to the agency
681 any change of circumstance related to the clinic's continuing
682 compliance with this part. Such change of circumstance includes,
683 but is not limited to, any change in the ownership of the
684 specialty clinic, the addition of any individual or business
685 entity possessing a pecuniary interest in the specialty clinic,
686 the employment of any individual as a member of the specialty
687 clinic's staff who would be required to undergo a criminal
688 background screening if such individual had been an employee at
689 the time of the initial licensure, and any change in the medical
690 or clinic director. The specialty clinic shall furnish the
691 information about any change of circumstances required under
692 this part and s. 400.991 within 30 days after the occurrence of
693 such change of circumstance.

694 Section 10. Section 400.995, Florida Statutes, is amended
695 to read:

696 400.995 Agency administrative penalties.—

697 (1) In addition to the requirements of part II of chapter
698 408, the agency may deny the application for a license renewal,
699 revoke and suspend the license, and impose administrative fines
700 of up to \$5,000 per violation for violations of ~~the requirements~~

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701 ~~of~~ this part or rules of the agency. In determining if a penalty
702 is to be imposed and in fixing the amount of the fine, the
703 agency shall consider the following factors:

704 (a) The gravity of the violation, including the
705 probability that death or serious physical or emotional harm to
706 a patient will result or has resulted, the severity of the
707 action or potential harm, and the extent to which ~~the provisions~~
708 ~~of~~ the applicable laws or rules were violated.

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

711 (c) Any previous violations.

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

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

717 (3) Any action taken to correct a violation shall be
718 documented in writing by the owner, medical director, or clinic
719 director of the clinic or specialty clinic and verified through
720 followup visits by agency personnel. The agency may impose a
721 fine and, in the case of an owner-operated clinic or specialty
722 clinic, revoke or deny a clinic's license when a clinic medical
723 director or clinic director knowingly misrepresents actions
724 taken to correct a violation.

725 (4) Any licensed clinic whose owner, medical director, or
726 clinic director concurrently operates an unlicensed clinic shall
727 be subject to an administrative fine of \$5,000 per day.

728 (5) Any clinic or specialty clinic whose owner fails to

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729 apply for a change-of-ownership license and operates the clinic
730 or specialty clinic under the new ownership is subject to a fine
731 of \$5,000.

732 (6) As an alternative to or in conjunction with an
733 administrative action against a clinic or specialty clinic for
734 violations of this part and adopted rules ~~During an inspection,~~
735 the agency shall make a reasonable attempt to discuss during the
736 inspection each violation with the owner, medical director, or
737 clinic director of the clinic or specialty clinic, prior to
738 written notification. The agency, instead of fixing a period
739 within which the clinic or specialty clinic shall enter into
740 compliance with standards, may request a plan of corrective
741 action from the clinic or specialty clinic which demonstrates a
742 good faith effort to remedy each violation by a specific date,
743 subject to the approval of the agency.

744 Section 11. Section 400.996, Florida Statutes, is created
745 to read:

746 400.996 Specialty clinics; complaints; audits; referrals.-

747 (1) The agency shall receive, document, and process
748 complaints about specialty clinics. Upon receipt of any
749 complaint that asserts the existence of facts evidencing
750 possible billing fraud by a specialty clinic or by any employee
751 of a specialty clinic, the agency shall request the complainant
752 to make such assertions by sworn affidavit.

753 (2) Upon receipt of any sworn affidavit that asserts the
754 existence of facts evidencing possible billing fraud by a
755 specialty clinic or any of its employees, the agency shall refer
756 the complaint to the Office of Fiscal Integrity within the

757 Department of Financial Services.

758 (3) The Department of Financial Services shall report
759 findings to the agency for any appropriate licensure action.
760 Such report shall include a statement of facts as determined by
761 the Department of Financial Services to exist, specifically with
762 regard to the possible violations of licensure requirements. If,
763 during an investigation, the Department of Financial Services
764 has reason to believe that any criminal law of this state has or
765 may have been violated, the department shall refer such
766 investigation to appropriate prosecutorial agencies and shall
767 provide investigative assistance to those agencies, as required.

768 (4) The investigating authority and the agency shall
769 cooperate with each other and prepare a record and share
770 information from which the agency may determine if any action
771 for sanctions under this part are warranted.

772 (5) A person commits a misdemeanor of the first degree,
773 punishable as provided in s. 775.082 or s. 775.083 if:

774 (a) He or she submits a sworn complaint that initiates a
775 complaint investigation pursuant to this section; and

776 (b) The sworn complaint is determined to be totally
777 without any factual basis to support the assertions made in the
778 complaint that facts existed evidencing possible fraudulent
779 practices by a specialty clinic or any of its employees.

780 (6) The Office of Fiscal Integrity within the Department
781 of Financial Services shall conduct unannounced reviews,
782 investigations, analyses, and audits to investigate complaints
783 and, as necessary, to determine whether a specialty clinic's
784 billings are fraudulent or unlawful. The Department of Financial

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785 Services may enter upon the premises of the clinic during
786 regular business hours and demand and immediately secure copies
787 of billing and other records of the clinic which will enable the
788 Department of Financial Services to investigate complaints or
789 determine whether a specialty clinic's billings are fraudulent
790 or unlawful.

791 (7) A licensed specialty clinic shall allow full,
792 complete, and immediate access to the premises and to billing
793 records or information to any such officer or employee who
794 conducts a review, investigation, analysis, or audit to
795 determine compliance with this part and with applicable rules.
796 Failure to allow full, complete, and immediate access to the
797 premises and to billing records or information to any
798 representative of the agency or Department of Financial Services
799 who attempts to conduct a review, investigation, analysis, or
800 audit to determine compliance with this part constitutes a
801 ground for emergency suspension of the license by the agency
802 pursuant to s. 120.60(6).

803 (8) In addition to any administrative fines imposed, the
804 agency may assess a fee equal to the cost of conducting any
805 review, investigation, analysis, or audit performed by the
806 agency or the Department of Financial Services.

807 (9) All investigators designated by the Chief Financial
808 Officer to perform duties under this part and who are certified
809 under s. 943.1395 are law enforcement officers of the state.
810 Such investigators may conduct criminal investigations, bear
811 arms, make arrests, and apply for, serve, and execute search
812 warrants, arrest warrants, capias, and other processes

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813 throughout the state pertaining to fraud investigations under
814 this section.

815 Section 12. Subsection (27) of section 408.802, Florida
816 Statutes, is amended to read:

817 408.802 Applicability.—The provisions of this part apply
818 to the provision of services that require licensure as defined
819 in this part and to the following entities licensed, registered,
820 or certified by the agency, as described in chapters 112, 383,
821 390, 394, 395, 400, 429, 440, 483, and 765:

822 (27) Health care clinics and specialty clinics, as
823 provided under part X of chapter 400.

824 Section 13. Subsection (25) of section 408.820, Florida
825 Statutes, is amended to read:

826 408.820 Exemptions.—Except as prescribed in authorizing
827 statutes, the following exemptions shall apply to specified
828 requirements of this part:

829 (25) Health care clinics and specialty clinics, as
830 provided under part X of chapter 400, are exempt from s.
831 408.810(6), (7), and (10).

832 Section 14. Paragraph (mm) is added to subsection (1) of
833 section 456.072, Florida Statutes, to read:

834 456.072 Grounds for discipline; penalties; enforcement.—

835 (1) The following acts shall constitute grounds for which
836 the disciplinary actions specified in subsection (2) may be
837 taken:

838 (mm) Intentionally providing false information on an
839 application for a certificate of exemption from clinic licensure
840 under part XIII of chapter 400.

841 Section 15. Paragraph (a) of subsection (1) of section
 842 627.732, Florida Statutes, is amended to read:

843 627.732 Definitions.—As used in ss. 627.730–627.7405, the
 844 term:

845 (1) "Broker" means any person not possessing a license
 846 under chapter 395, chapter 400, chapter 429, chapter 458,
 847 chapter 459, chapter 460, chapter 461, or chapter 641 who
 848 charges or receives compensation for any use of medical
 849 equipment and is not the 100-percent owner or the 100-percent
 850 lessee of such equipment. For purposes of this section, such
 851 owner or lessee may be an individual, a corporation, a
 852 partnership, or any other entity and any of its 100-percent-
 853 owned affiliates and subsidiaries. For purposes of this
 854 subsection, the term "lessee" means a long-term lessee under a
 855 capital or operating lease, but does not include a part-time
 856 lessee. The term "broker" does not include a hospital or
 857 physician management company whose medical equipment is
 858 ancillary to the practices managed, a debt collection agency, or
 859 an entity that has contracted with the insurer to obtain a
 860 discounted rate for such services; nor does the term include a
 861 management company that has contracted to provide general
 862 management services for a licensed physician or health care
 863 facility and whose compensation is not materially affected by
 864 the usage or frequency of usage of medical equipment or an
 865 entity that is 100-percent owned by one or more hospitals or
 866 physicians. The term "broker" does not include a person or
 867 entity that certifies, upon request of an insurer, that:

868 (a) It is a clinic licensed under ss. 400.990–400.996

869 ~~400.990-400.995;~~

870 Section 16. Paragraph (a) of subsection (1) of section
871 627.736, Florida Statutes, is amended to read:

872 627.736 Required personal injury protection benefits;
873 exclusions; priority; claims.—

874 (1) REQUIRED BENEFITS.—Every insurance policy complying
875 with the security requirements of s. 627.733 shall provide
876 personal injury protection to the named insured, relatives
877 residing in the same household, persons operating the insured
878 motor vehicle, passengers in such motor vehicle, and other
879 persons struck by such motor vehicle and suffering bodily injury
880 while not an occupant of a self-propelled vehicle, subject to
881 the provisions of subsection (2) and paragraph (4) (e), to a
882 limit of \$10,000 for loss sustained by any such person as a
883 result of bodily injury, sickness, disease, or death arising out
884 of the ownership, maintenance, or use of a motor vehicle as
885 follows:

886 (a) Medical benefits.—Eighty percent of all reasonable
887 expenses for medically necessary medical, surgical, X-ray,
888 dental, and rehabilitative services, including prosthetic
889 devices, and medically necessary ambulance, hospital, and
890 nursing services. However, the medical benefits shall provide
891 reimbursement only for such services and care that are lawfully
892 provided, supervised, ordered, or prescribed by a physician
893 licensed under chapter 458 or chapter 459, a dentist licensed
894 under chapter 466, or a chiropractic physician licensed under
895 chapter 460 or that are provided by any of the following persons
896 or entities:

897 1. A hospital or ambulatory surgical center licensed under
898 chapter 395.

899 2. A person or entity licensed under ss. 401.2101-401.45
900 that provides emergency transportation and treatment.

901 3. An entity wholly owned by one or more physicians
902 licensed under chapter 458 or chapter 459, chiropractic
903 physicians licensed under chapter 460, or dentists licensed
904 under chapter 466 or by such practitioner or practitioners and
905 the spouse, parent, child, or sibling of that practitioner or
906 those practitioners.

907 4. An entity wholly owned, directly or indirectly, by a
908 hospital or hospitals.

909 5. A health care clinic licensed under ss. 400.990-400.996
910 ~~400.990-400.995~~ that is:

911 a. Accredited by the Joint Commission on Accreditation of
912 Healthcare Organizations, the American Osteopathic Association,
913 the Commission on Accreditation of Rehabilitation Facilities, or
914 the Accreditation Association for Ambulatory Health Care, Inc.;
915 or

916 b. A health care clinic that:

917 (I) Has a medical director licensed under chapter 458,
918 chapter 459, or chapter 460;

919 (II) Has been continuously licensed for more than 3 years
920 or is a publicly traded corporation that issues securities
921 traded on an exchange registered with the United States
922 Securities and Exchange Commission as a national securities
923 exchange; and

924 (III) Provides at least four of the following medical

- 925 specialties:
- 926 (A) General medicine.
 - 927 (B) Radiography.
 - 928 (C) Orthopedic medicine.
 - 929 (D) Physical medicine.
 - 930 (E) Physical therapy.
 - 931 (F) Physical rehabilitation.
 - 932 (G) Prescribing or dispensing outpatient prescription
 - 933 medication.
 - 934 (H) Laboratory services.

935

936 The Financial Services Commission shall adopt by rule the form

937 that must be used by an insurer and a health care provider

938 specified in subparagraph 3., subparagraph 4., or subparagraph

939 5. to document that the health care provider meets the criteria

940 of this paragraph, which rule must include a requirement for a

941 sworn statement or affidavit.

942

943 Only insurers writing motor vehicle liability insurance in this

944 state may provide the required benefits of this section, and no

945 such insurer shall require the purchase of any other motor

946 vehicle coverage other than the purchase of property damage

947 liability coverage as required by s. 627.7275 as a condition for

948 providing such required benefits. Insurers may not require that

949 property damage liability insurance in an amount greater than

950 \$10,000 be purchased in conjunction with personal injury

951 protection. Such insurers shall make benefits and required

952 property damage liability insurance coverage available through

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953 normal marketing channels. Any insurer writing motor vehicle
954 liability insurance in this state who fails to comply with such
955 availability requirement as a general business practice shall be
956 deemed to have violated part IX of chapter 626, and such
957 violation shall constitute an unfair method of competition or an
958 unfair or deceptive act or practice involving the business of
959 insurance; and any such insurer committing such violation shall
960 be subject to the penalties afforded in such part, as well as
961 those which may be afforded elsewhere in the insurance code.

962 Section 17. Florida Barbara B. Lumpkin Center for Nursing
963 designated; Department of Health to erect suitable markers.-

964 (1) The Florida Center for Nursing, created by s.
965 464.0195, Florida Statutes, and located in Orlando is designated
966 as the "Florida Barbara B. Lumpkin Center for Nursing."

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

970 Section 18. For the 2010-2011 fiscal year, the sums of
971 \$212,528 in recurring funds and \$25,347 in nonrecurring funds
972 are appropriated from the Health Care Trust Fund to the Agency
973 for Health Care Administration, and four full-time equivalent
974 positions and associated salary rate of 134,455 are authorized
975 for the purpose of administering the provisions of this act.

976 Section 19. This act shall take effect July 1, 2010.