

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 594

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Nursing Homes and Related Health Care Facilities

DATE: April 16, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Looke | Stovall | HP | Favorable |
| 2. | Knudson | Burgess | BI | Fav/CS |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 594 expands the types of clinic facilities that are exempt from the clinic licensure requirements of the Health Care Clinic Law. The CS exempts from clinic licensure pediatric cardiology, perinatology, or anesthesia clinical facilities that are a publicly traded corporation or that are wholly owned, directly or indirectly, by a publicly traded corporation. The bill also revises the exemption for entities owned by a corporation with \$250 million or more in total annual sales of health care services provided by licensed health care practitioners by conditioning the exemption on whether one of the persons responsible for the operation of the entity is a Florida-licensed health care practitioner who supervises its business activities. Currently, the exemption is conditioned on whether at least one owner is a Florida Licensed health care practitioner who supervises the business activities of the entity.

The CS also exempts certain clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-fault Law.

The effective date is July 1, 2013.

This bill substantially amends section 400.9905 of the Florida Statutes.

II. Present Situation:

Clinics in the State of Florida must be licensed by the Agency for Health Care Administration (AHCA).¹ Florida law defines a clinic as “an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.”² There are, however, many exemptions from the definition of “clinic” and thus from the requirement to obtain a license from the AHCA.³ Orthotic or prosthetic clinical facilities that are publicly traded corporations or that own or are wholly owned by a publicly traded corporation are exempt from clinic licensure. Also exempt are entities owned by a corporation that has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the owners is a Florida-licensed health care practitioner who is responsible for supervising the business activities of the entity and is legally responsible for compliance with state law for purposes of the Health Care Clinic Act. Another exemption is for health care entities that are certified under 42 C.F.R. 485, subpart H, to provide physical therapy or speech pathology services along with entities that own, are owned by, or are under common ownership with, directly or indirectly, such health care entities.⁴ Providers certified under 42 C.F.R. 485, subpart H include:

- **Clinics** where the medical services are furnished by a group of three or more physicians practicing medicine together and a physician is present during all hours of operation of the clinic to furnish medical services, as distinguished from purely administrative services;
- **Rehabilitation agencies** that provide an integrated interdisciplinary rehabilitation program designed to upgrade the physical functioning of handicapped disabled individuals by bringing specialized rehabilitation staff together to perform as a team and provide at least physical therapy or speech-language pathology services; and
- **Public health agencies** established by a state or local government, the primary function of which is to maintain the health of the population served by performing environmental health services, preventive medical services, and in certain cases, therapeutic services.⁵

Data from AHCA indicates that there are 770 rehabilitation agencies in the state of Florida including 237 parent (primary) locations and 533 extension locations.⁶ The Agency for Health Care Administration is the contracted state agency for the Centers for Medicare and Medicaid Services (CMS). As the contracted state agency for CMS, AHCA conducts a certification survey of a rehabilitation agency and any of its extension locations at least once every 6 years. Medicare accepts the certification of a rehabilitation agency that is certified by AHCA. The survey focuses on services provided to ensure that the required conditions of participation are met, but does not examine issues related to billing.

¹ S. 400.991, F.S.

² S. 400.9905(4), F.S.

³ S. 400.9905(4)(a)-(n), F.S.

⁴ S. 400.9905(b)-(d), F.S.

⁵ 42 C.F.R. 485.703

⁶ Agency for Health Care Administration, *2013 Bill Analysis & Economic Impact Statement – SB 594*, (on file with the Senate Banking and Insurance Committee).

Pediatric Cardiology, Perinatology, and Anesthesia

Pediatric cardiology is a medical specialization that focuses on the study of the heart and diseases of the heart in children. Perinatology is a medical specialization that focuses on the care of mothers and their children during pregnancy. Anesthesiology is the practice of medicine that specializes in the relief of pain during and after surgical procedures and childbirth, during certain chronic disease processes, and during resuscitation and critical care of patients in the operating room and intensive care environments.⁷

Clinic Licensure Requirements Under the Florida Motor Vehicle No-Fault Law

In order to receive reimbursement under the Florida Motor Vehicle No-Fault Law (No-Fault law) health care entities excluded from the definition of a clinic under s. 400.9905, F.S., still must obtain a license as a clinic unless they are listed by s. 627.736(5)(h), F.S. The health care entities that are not required to obtain licensure in order to receive PIP medical benefits reimbursement are those that are:

- Wholly owned by a licensed physician;
- Wholly owned by a licensed dentist;
- Wholly owned by a licensed chiropractic physician;
- Wholly owned by a licensed physician, licensed dentist, or licensed chiropractor and the spouse, parent, child, or sibling of the physician, dentist, or chiropractor;
- Wholly owned or that wholly owns a licensed hospital; or
- A licensed clinical facility affiliated with an accredited medical school that provides training for medical students, residents, or fellows.

Florida Motor Vehicle No-Fault Law

Under the state's No-Fault law, owners or registrants of motor vehicles are required to purchase \$10,000 of personal injury protection (PIP) insurance and \$5,000 in death benefits which compensates persons injured in accidents regardless of fault.⁸ Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.⁹ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold. In contrast, under a tort liability system, the negligent party is responsible for damages caused, and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both PIP and property damage liability (PD) insurance.¹⁰ Personal injury protection coverage includes medical, disability, and death benefits, provides reimbursement for 80 percent of reasonable medical expenses if the individual receives initial services and care within 14 days after the motor vehicle accident in the manner prescribed, 60

⁷ S. 458.3475(1)(c), F.S.

⁸ SS. 627.730 – 627.7405, F.S.

⁹ S. 627.736(1), F.S.

¹⁰ See s. 324.022, F.S., and s. 627.733, F.S.

percent of loss of income, and all expenses reasonably incurred in obtaining from others ordinary and necessary services which the insured would have performed, for bodily injury sustained in a motor vehicle accident, without regard to fault. Florida requires that the PIP medical benefit provide \$10,000 if the injured person is determined to have an emergency medical condition; otherwise the medical benefit is \$2,500.¹¹ A \$5,000 death benefit is also provided.¹² The PD coverage must provide a \$10,000 minimum benefit.¹³

Motor Vehicle Insurance Fraud in Florida

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals received by the Division of Insurance Fraud during the 3 fiscal years beginning in 2002 and ending in 2005. That 3-year amount was nearly doubled by the 7,748 PIP fraud referrals received by the division during the 2011/2012 fiscal year. Given this fact, the following description from the 2005 report is an accurate description of the current situation regarding motor vehicle insurance fraud:

"Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering..."

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders.

Legislative Response

Responding to widespread PIP related insurance fraud and the rising cost of automobile insurance, the Insurance Consumer Advocate formed the PIP Working Group in July of 2011, to assist in developing a policy paper that broadly reviewed and outlined the challenges regarding the rising fraud and abuse associated with Florida's No-Fault system. The working group was comprised of various stakeholders who provided data, commentary and policy direction. In December 2011, the working group released a report which concluded that absent much needed changes to Florida's No-Fault system, Florida consumers will be left with fewer choices, higher rates or, they will choose to go uninsured. In response to these issues and the working group's report, the 2012 Legislature passed CS/CS/HB 199 (CS/CS/SB 1860 by Senator Negrón), which was signed into law on April 24, 2012. The bill significantly changed to Florida's PIP insurance laws relating to:

¹¹ S. 627.736(1)(a)3., F.S.

¹² S. 627.736(1)(c), F.S.

¹³ S. 324.

- PIP medical benefits;
- PIP death benefits;
- The PIP medical fee schedule;
- Mandatory rate filings and data call;
- Attorney fees;
- Investigation and payment of claims; and,
- Prevention of PIP-related insurance fraud.

CS/CS/HB 119 contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.¹⁴ All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.¹⁵ The bill also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., to exempt clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law if they are certified before June 30, 2014, or if they are owned by an entity which owns other clinics certified before June 30, 2014.

The CS provides exemptions from clinic licensure for pediatric cardiology, perinatology, or anesthesia clinical facilities that are publicly traded or that are wholly owned, directly or indirectly by a publicly traded corporation. The CS also revises the exemption for entities owned by a corporation with \$250 million or more in total annual sales of health care services provided by licensed health care practitioners by conditioning the exemption on whether one of the persons responsible for the operation of the entity is a Florida-licensed health care practitioner who supervises its business activities. Currently, the exemption is conditioned on whether at least one owner is a Florida Licensed health care practitioner who supervises the business activities of the entity.

Section 2 creates an effective date of July 1, 2013.

¹⁴ Section 627.736(4)(i), F.S.

¹⁵ Section 627.736(5)(h), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could have a positive fiscal impact on health care entities certified under 42 C.F.R. part 485, subpart H, which will be newly eligible to receive reimbursement under the Florida Motor Vehicle No-Fault Law without obtaining a license from the AHCA. Pediatric cardiology, perinatology, and anesthesia health care facilities that are newly exempted from clinic licensure will benefit from being exempt from licensure fees. Representatives from AHCA indicate that pediatric cardiology, perinatology, and anesthesia health care facilities that are publicly traded corporations or owned by a publicly traded corporation historically have not violated the clinic licensure statute.

C. Government Sector Impact:

The exemption from clinic licensure for pediatric cardiology, perinatology, or anesthesia clinical facilities that are a publicly traded corporation or owned by a publicly traded corporation created by the CS will reduce the clinic licensure fees paid to AHCA and also reduce the workload of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 16, 2013:

The CS exempts from clinic licensure pediatric cardiology, perinatology, or anesthesia clinical facilities that are a publicly traded corporation or that are wholly owned, directly or indirectly, by a publicly traded corporation. The CS also revises the exemption for entities owned by a corporation with \$250 million or more in total annual sales of health care services provided by licensed health care practitioners by conditioning the exemption on whether one of the persons responsible for the operation of the entity is a Florida-licensed health care practitioner who supervises its business activities. Under current law, the exemption is conditioned on whether at least one owner is a Florida Licensed health care practitioner who supervises the business activities of the entity.

- B. **Amendments:**

None.