

Bill No. SB 2112

Barcode 240190

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Proposed Committee Substitute by the Committee on Banking and Insurance

1 A bill to be entitled

2 An act relating to health care clinics;

3 amending s. 400.9905, F.S.; redefining the term

4 "clinic" for purposes of the Health Care Clinic

5 Act to include certain additional providers;

6 amending s. 400.991, F.S.; requiring additional

7 persons to be subject to background screening;

8 revising certain requirements for applying for

9 licensure as a health care clinic; providing

10 additional grounds under which an applicant may

11 be denied licensure due to a finding of guilt

12 for committing a felony; amending s. 400.9935,

13 F.S.; revising the responsibilities of the

14 medical director and the clinical director;

15 requiring all persons providing health care

16 services to individuals in a clinic to comply

17 with the licensure laws and rules under which

18 that person is licensed; providing for a

19 certificate of exemption from licensure as a

20 clinic to expire within a specified period;

21 providing for renewal of the certificate of

22 exemption; revising the application procedures

23 for a certificate of exemption; providing

24 grounds for the denial, withdrawal, or

25 emergency suspension of a certificate of

26 exemption by the Agency for Health Care

27 Administration; providing that it is a

28 third-degree felony for an applicant to submit

29 fraudulent or material and misleading

30 information to the agency; requiring health

31 care clinics to display signs containing

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1 certain information relating to insurance
 2 fraud; authorizing compliance inspections by
 3 the Division of Insurance Fraud; requiring
 4 clinics to allow inspection access; providing
 5 an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Subsection (4) of section 400.9905, Florida
10 Statutes, is amended to read:

11 400.9905 Definitions.--

12 (4) "Clinic" means an entity at which health care
 13 services are provided to individuals and which tenders charges
 14 for reimbursement for such services, including a mobile clinic
 15 and a portable equipment provider. For purposes of this part,
 16 the term does not include and the licensure requirements of
 17 this part do not apply to:

18 (a) Entities licensed or registered by the state under
 19 chapter 395; or entities licensed or registered by the state
 20 and providing only health care services within the scope of
 21 services authorized under their respective licenses granted
 22 under ss. 383.30-383.335, chapter 390, chapter 394, chapter
 23 397, this chapter except part XIII, chapter 463, chapter 465,
 24 chapter 466, chapter 478, part I of chapter 483, chapter 484,
 25 or chapter 651; end-stage renal disease providers authorized
 26 under 42 C.F.R. part 405, subpart U; or providers certified
 27 under 42 C.F.R. part 485, subpart B or subpart H; or any
 28 entity that provides neonatal or pediatric hospital-based
 29 health care services by licensed practitioners solely within a
 30 hospital licensed under chapter 395.

31 (b) Entities that own, directly or indirectly,

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1 entities licensed or registered by the state pursuant to
 2 chapter 395; or entities that own, directly or indirectly,
 3 entities licensed or registered by the state and providing
 4 only health care services within the scope of services
 5 authorized pursuant to their respective licenses granted under
 6 ss. 383.30-383.335, chapter 390, chapter 394, chapter 397,
 7 this chapter except part XIII, chapter 463, chapter 465,
 8 chapter 466, chapter 478, part I of chapter 483, chapter 484,
 9 chapter 651; end-stage renal disease providers authorized
 10 under 42 C.F.R. part 405, subpart U; or providers certified
 11 under 42 C.F.R. part 485, subpart B or subpart H; or any
 12 entity that provides neonatal or pediatric hospital-based
 13 health care services by licensed practitioners solely within a
 14 hospital licensed under chapter 395.

15 (c) Entities that are owned, directly or indirectly,
 16 by an entity licensed or registered by the state pursuant to
 17 chapter 395; or entities that are owned, directly or
 18 indirectly, by an entity licensed or registered by the state
 19 and providing only health care services within the scope of
 20 services authorized pursuant to their respective licenses
 21 granted under ss. 383.30-383.335, chapter 390, chapter 394,
 22 chapter 397, this chapter except part XIII, chapter 463,
 23 chapter 465, chapter 466, chapter 478, part I of chapter 483,
 24 chapter 484, or chapter 651; end-stage renal disease providers
 25 authorized under 42 C.F.R. part 405, subpart U; or providers
 26 certified under 42 C.F.R. part 485, subpart B or subpart H; or
 27 any entity that provides neonatal or pediatric hospital-based
 28 health care services by licensed practitioners solely within a
 29 hospital under chapter 395.

30 (d) Entities that are under common ownership, directly
 31 or indirectly, with an entity licensed or registered by the

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1 state pursuant to chapter 395; or entities that are under
2 common ownership, directly or indirectly, with an entity
3 licensed or registered by the state and providing only health
4 care services within the scope of services authorized pursuant
5 to their respective licenses granted under ss. 383.30-383.335,
6 chapter 390, chapter 394, chapter 397, this chapter except
7 part XIII, chapter 463, chapter 465, chapter 466, chapter 478,
8 part I of chapter 483, chapter 484, or chapter 651; end-stage
9 renal disease providers authorized under 42 C.F.R. part 405,
10 subpart U; or providers certified under 42 C.F.R. part 485,
11 subpart B or subpart H; or any entity that provides neonatal
12 or pediatric hospital-based health care services by licensed
13 practitioners solely within a hospital licensed under chapter
14 395.

15 (e) An entity that is exempt from federal taxation
16 under 26 U.S.C. s. 501(c)(3) or s. 501(c)(4), any community
17 college or university clinic, and any entity owned or operated
18 by the federal or state government, including agencies,
19 subdivisions, or municipalities thereof.

20 (f) A sole proprietorship, group practice,
21 partnership, ~~or~~ corporation, or other legal entity that
22 provides health care services by physicians licensed under
23 chapter 458, chapter 459, chapter 460, or chapter 461 covered
24 by s. 627.419, that is directly supervised by one or more of
25 such physicians, and that is wholly owned by one or more of
26 those physicians or by a physician and the spouse, parent,
27 child, or sibling of that physician.

28 (g) A sole proprietorship, group practice,
29 partnership, ~~or~~ corporation, or other legal entity that
30 provides health care services by licensed health care
31 practitioners under chapter 457, chapter 458, chapter 459,

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1 chapter 460, chapter 461, chapter 462, chapter 463, chapter
2 466, chapter 467, chapter 480, chapter 484, chapter 486,
3 chapter 490, chapter 491, or part I, part III, part X, part
4 XIII, or part XIV of chapter 468, or s. 464.012, which
5 entities are wholly owned by one or more licensed health care
6 practitioners, or the licensed health care practitioners set
7 forth in this paragraph and the spouse, parent, child, or
8 sibling of a licensed health care practitioner, so long as one
9 of the owners who is a licensed health care practitioner is
10 supervising the health care services ~~business activities~~ and
11 is legally responsible for the entity's compliance with all
12 federal and state laws. However, ~~a~~ health care services
13 provided may not exceed the scope of the licensed owner's
14 health care ~~practitioner may not supervise services beyond the~~
15 ~~scope of the practitioner's~~ license, except that, for the
16 purposes of this part, a clinic owned by a licensee in s.
17 456.053(3)(b) that provides only services authorized pursuant
18 to s. 456.053(3)(b) may be supervised by a licensee specified
19 in s. 456.053(3)(b).

20 (h) Clinical facilities affiliated with an accredited
21 medical school at which training is provided for medical
22 students, residents, or fellows.

23 (i) Entities that provide only oncology or radiation
24 therapy services by physicians licensed under chapter 458 or
25 chapter 459.

26 (j) Clinical facilities affiliated with a college of
27 chiropractic accredited by the Council on Chiropractic
28 Education at which training is provided for chiropractic
29 students.

30 Section 2. Subsections (5) and (7) of section 400.991,
31 Florida Statutes, are amended to read:

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1 400.991 License requirements; background screenings;
2 prohibitions.--

3 (5)(a) The application shall contain information that
4 includes, but need not be limited to, information pertaining
5 to the name, residence and business address, phone number,
6 social security number, and license number of the medical or
7 clinic director, of the licensed medical providers employed or
8 under contract with the clinic, and of each person who,
9 directly or indirectly, owns or controls 5 percent or more of
10 an interest in the clinic, or general partners in limited
11 liability partnerships.

12 (b) Any person or entity that has a pecuniary interest
13 in a clinic who may or may not own stock or an equivalent
14 interest in the clinic, but nonetheless has control over or
15 the authority to approve, directly or indirectly, clinic
16 billing, policy, business activities, or personnel decisions,
17 including, but not limited to, contracted or employed
18 third-party billing persons or entities, managers, and
19 management companies, and persons and entities, directly or
20 indirectly, which lend, give, or gift money of any
21 denomination or any thing of value exceeding an aggregate of
22 \$5,000, for clinic use, with or without an expectation of a
23 return of the money or thing of value, and regardless of
24 profit motive, are subject to background screening
25 requirements under this part.

26 (c) The agency may adopt rules to administer this
27 subsection.

28 (7) Each applicant for licensure shall comply with the
29 following requirements:

30 (a) As used in this subsection, the term "applicant"
31 means individuals owning or controlling, directly or

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1 indirectly, 5 percent or more of an interest in a clinic; the
2 medical or clinic director, or a similarly titled person who
3 is responsible for the day-to-day operation of the licensed
4 clinic; the financial officer or similarly titled individual
5 who is responsible for the financial operation of the clinic;
6 and licensed health care practitioners at the clinic.

7 (b) Upon receipt of a completed, signed, and dated
8 application, the agency shall require background screening of
9 the applicant, in accordance with the level 2 standards for
10 screening set forth in paragraph (d) chapter 435. Proof of
11 compliance with the level 2 background screening requirements
12 of paragraph (d) chapter 435 which has been submitted within
13 the previous 5 years in compliance with the any other health
14 care clinic licensure requirements of this part state is
15 acceptable in fulfillment of this paragraph. Applicants who
16 own less than 10 percent of a health care clinic are not
17 required to submit fingerprints under this section.

18 (c) Each applicant must submit to the agency, with the
19 application, a description and explanation of any exclusions,
20 permanent suspensions, or terminations of an applicant from
21 the Medicare or Medicaid programs. Proof of compliance with
22 the requirements for disclosure of ownership and control
23 interest under the Medicaid or Medicare programs may be
24 accepted in lieu of this submission. The description and
25 explanation may indicate whether such exclusions, suspensions,
26 or terminations were voluntary or not voluntary on the part of
27 the applicant.

28 (d) A license may not be granted to a clinic if the
29 applicant has been found guilty of, regardless of
30 adjudication, or has entered a plea of nolo contendere or
31 guilty to, any offense prohibited under the level 2 standards

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1 for screening set forth in chapter 435; any felony under
2 chapter 400, chapter 408, chapter 409, chapter 440, chapter
3 624, chapter 626, chapter 627, chapter 812, chapter 817,
4 chapter 831, chapter 837, chapter 838, chapter 895, chapter
5 896; or any substantially comparable offense or crime of
6 another state or of the United States, if a felony in that
7 jurisdiction, within the past 10 years. Each person required
8 to provide background screening shall disclose to the agency
9 any arrest for any crime for which any court disposition other
10 than dismissal has been made within the past 10 years. Failure
11 to provide such information shall be considered a material
12 omission in the application process., or a violation of
13 insurance fraud under s. 817.234, within the past 5 years. If
14 the applicant has been convicted of an offense prohibited
15 under the level 2 standards or insurance fraud in any
16 jurisdiction, the applicant must show that his or her civil
17 rights have been restored prior to submitting an application.

18 (e) The agency may deny or revoke licensure or
19 exemption if the applicant has falsely represented any
20 material fact or omitted any material fact from the
21 application which is permitted or required by this part.

22 (f) Each applicant that performs the technical
23 component of magnetic resonance imaging, static radiographs,
24 computer tomography, or positron emission tomography, and also
25 provides the professional components of such services through
26 an employee or independent contractor, must provide the serial
27 or operating numbers of each magnetic resonance imaging,
28 static radiograph, computer tomography, or positron emission
29 tomography machine.

30 Section 3. Section 400.9935, Florida Statutes, is
31 amended to read:

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1 400.9935 Clinic responsibilities.--

2 (1) Each clinic shall appoint a medical director or
3 clinic director who shall agree in writing to accept legal
4 responsibility for the following activities on behalf of the
5 clinic. The medical director or the clinic director shall:

6 (a) Have signs identifying the medical director or
7 clinic director posted in a conspicuous location within the
8 clinic readily visible to all patients.

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

12 (c) Review any patient referral contracts or
13 agreements executed by the clinic.

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

17 (e) Ensure that all health care practitioners at the
18 clinic provide health care services in accordance with the
19 requirements of subsection (6).

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

22 ~~(g)(f)~~ Ensure compliance with the recordkeeping,
23 office surgery, and adverse incident reporting requirements of
24 chapter 456, the respective practice acts, and rules adopted
25 under this part.

26 ~~(h)(g)~~ Conduct systematic reviews of clinic billings
27 to ensure that the billings are not fraudulent or unlawful.
28 Upon discovery of an unlawful charge, the medical director or
29 clinic director shall take immediate corrective action. If the
30 clinic performs only the technical component of magnetic
31 resonance imaging, static radiographs, computed tomography, or

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1 positron emission tomography, and provides the professional
 2 interpretation of such services, in a fixed facility that is
 3 accredited by the Joint Commission on Accreditation of
 4 Healthcare Organizations or the Accreditation Association for
 5 Ambulatory Health Care, and the American College of Radiology;
 6 and if, in the preceding quarter, the percentage of scans
 7 performed by that clinic which was billed to all personal
 8 injury protection insurance carriers was less than 15 percent,
 9 the chief financial officer of the clinic may, in a written
 10 acknowledgment provided to the agency, assume the
 11 responsibility for the conduct of the systematic reviews of
 12 clinic billings to ensure that the billings are not fraudulent
 13 or unlawful.

14 (i) Serve in that capacity for no more than a maximum
 15 of five health care clinics that have a cumulative total of no
 16 more than 200 employees and persons under contract with the
 17 health care clinic at a given time. A medical or clinic
 18 director may not supervise a health care clinic more than 200
 19 miles away from any other health care clinic supervised by the
 20 same medical or clinic director. The agency may allow for
 21 waivers to the limitations of this paragraph upon a showing of
 22 good cause and a determination by the agency that the medical
 23 director will be able to adequately perform the requirements
 24 of this subsection.

25 (2) Any business that becomes a clinic after
 26 commencing operations must, within 5 days after becoming a
 27 clinic, file a license application under this part and shall
 28 be subject to all provisions of this part applicable to a
 29 clinic.

30 (3) Any contract to serve as a medical director or a
 31 clinic director entered into or renewed by a physician or a

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1 licensed health care practitioner in violation of this part is
2 void as contrary to public policy. This subsection shall apply
3 to contracts entered into or renewed on or after March 1,
4 2004.

5 (4) All charges or reimbursement claims made by or on
6 behalf of a clinic that is required to be licensed under this
7 part, but that is not so licensed, or that is otherwise
8 operating in violation of this part, are unlawful charges, and
9 therefore are noncompensable and unenforceable.

10 (5) Any person establishing, operating, or managing an
11 unlicensed clinic otherwise required to be licensed under this
12 part, or any person who knowingly files a false or misleading
13 license application or license renewal application, or false
14 or misleading information related to such application or
15 department rule, commits a felony of the third degree,
16 punishable as provided in s. 775.082, s. 775.083, or s.
17 775.084.

18 (6) All persons providing health care services to
19 individuals must comply with the licensure laws and rules
20 under which that person is licensed to provide such services
21 or as otherwise provided by law.

22 ~~(7)(6)~~ Any licensed health care provider who violates
23 this part is subject to discipline in accordance with this
24 chapter and his or her respective practice act.

25 ~~(8)(7)~~ The agency may fine, or suspend or revoke the
26 license of, any clinic licensed under this part for operating
27 in violation of the requirements of this part or the rules
28 adopted by the agency.

29 ~~(9)(8)~~ The agency shall investigate allegations of
30 noncompliance with this part and the rules adopted under this
31 part.

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1 ~~(10)(9)~~ Any person or entity providing health care
2 services which is not a clinic, as defined under s. 400.9905,
3 may voluntarily apply for a certificate of exemption from
4 licensure under its exempt status. Certificates of exemption
5 shall expire in 2 years and may be renewed. ~~with the agency on~~
6 ~~a form that sets forth its name or names and addresses, a~~
7 ~~statement of the reasons why it cannot be defined as a clinic,~~
8 ~~and other information deemed necessary by the agency. An~~
9 ~~exemption is not transferable. The agency may charge an~~
10 ~~applicant for a certificate of exemption in an amount equal to~~
11 ~~\$100 or the actual cost of processing the certificate,~~
12 ~~whichever is less.~~

13 (a) The agency shall provide a form that requires the
14 name or names and addresses, a statement of the reasons why
15 the applicant is exempt from licensure as a health care
16 clinic, and other information deemed necessary by the agency.
17 The signature on an application for a certificate of exemption
18 must be notarized and signed by persons having knowledge of
19 the truth of its contents. An exemption is not transferable
20 and is valid only for the reasons, location, persons, and
21 entity set forth on the application form. A person or entity
22 claiming an exemption under this part or issued a current
23 certificate of exemption must be exempt from the licensing
24 provisions of this part at all times, or such claim or
25 certificate shall be invalid from the date that such person or
26 entity is not exempt.

27 (b) The agency shall charge an applicant for a
28 certificate of exemption a fee of \$100 to cover the cost of
29 processing the certificate or the actual cost of processing
30 the certificate, whichever is less.

31 (c) An application for the renewal of a certificate of

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1 exemption must be submitted to the agency prior to the
2 expiration of the certificate of exemption. The agency may
3 investigate any applicant, person, or entity claiming an
4 exemption for purposes of determining compliance when a
5 certificate of exemption is sought. Authorized personnel of
6 the agency shall have access to the premises of any clinic for
7 the sole purpose of determining compliance with an exemption
8 under this part. The agency shall have access to all billings
9 and records indicated in s. 400.9915(2) and agency rules. The
10 agency may deny or withdraw a certificate of exemption when a
11 person or entity does not qualify under this part.

12 (d) A certificate of exemption is considered withdrawn
13 when the agency determines that an exempt status cannot be
14 confirmed. The provisions applicable to the unlicensed
15 operation of a health care clinic apply to any health care
16 provider that self-determines or claims an exemption or that
17 is issued a certificate of exemption if, in fact, such clinic
18 does not meet the exemption claimed.

19 (e) Any person or entity that submits an application
20 for a certificate of exemption which contains fraudulent or
21 material and misleading information commits a felony of the
22 third degree, punishable as provided in s. 775.082, s.
23 775.083, or s. 775.084.

24 (f) A response to a request in writing for additional
25 information or clarification must be filed with the agency no
26 later than 21 days after receipt of the request or the
27 application shall be denied.

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

30 (h) A person or entity that qualifies as a health care
31 clinic and has been denied a certificate of exemption must

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1 file an initial application and pay the fee. A certificate of
2 exemption is valid only when issued and current.

3 (i) The agency shall issue an emergency order of
4 suspension of a certificate of exemption when the agency finds
5 that the applicant has provided false or misleading material
6 information or omitted any material fact from the application
7 for a certificate of exemption which is permitted or required
8 by this part, or has submitted false or misleading information
9 to the agency when self-determining an exempt status and
10 materially misleading the agency as to such status.

11 ~~(11)(10)~~ The clinic shall display its license in a
12 conspicuous location within the clinic readily visible to all
13 patients.

14 ~~(12)(11)~~(a) Each clinic engaged in magnetic resonance
15 imaging services must be accredited by the Joint Commission on
16 Accreditation of Healthcare Organizations, the American
17 College of Radiology, or the Accreditation Association for
18 Ambulatory Health Care, within 1 year after licensure.
19 However, a clinic may request a single, 6-month extension if
20 it provides evidence to the agency establishing that, for good
21 cause shown, such clinic can not be accredited within 1 year
22 after licensure, and that such accreditation will be completed
23 within the 6-month extension. After obtaining accreditation as
24 required by this subsection, each such clinic must maintain
25 accreditation as a condition of renewal of its license.

26 (b) The agency may deny the application or revoke the
27 license of any entity formed for the purpose of avoiding
28 compliance with the accreditation provisions of this
29 subsection and whose principals were previously principals of
30 an entity that was unable to meet the accreditation
31 requirements within the specified timeframes. The agency may

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1 adopt rules as to the accreditation of magnetic resonance
2 imaging clinics.

3 ~~(13)(12)~~ The agency shall give full faith and credit
4 pertaining to any past variance and waiver granted to a
5 magnetic resonance imaging clinic from rule 64-2002, Florida
6 Administrative Code, by the Department of Health, until
7 September 2004. After that date, such clinic must request a
8 variance and waiver from the agency under s. 120.542.

9 (14) The clinic shall display a sign in a conspicuous
10 location within the clinic readily visible to all patients
11 indicating that, pursuant to s. 626.9892, the Department of
12 Financial Services may pay rewards of up to \$25,000 to persons
13 providing information leading to the arrest and conviction of
14 persons committing crimes investigated by the Division of
15 Insurance Fraud arising from violations of s. 440.105, s.
16 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
17 employee of the Division of Insurance Fraud may make
18 unannounced inspections of a clinic licensed under this part
19 as necessary to determine whether the clinic is in compliance
20 with this subsection. A licensed clinic shall allow full and
21 complete access to the premises to such authorized employee of
22 the division who makes an inspection to determine compliance
23 with this subsection.

24 Section 4. This act shall take effect January 1, 2007.

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