

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Health Regulation Committee

BILL: CS/SB 2354

INTRODUCER: Health Regulation Committee and Senator Lawson

SUBJECT: The Health Care Clinic Act

DATE: April 20, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Wilson	HR	Fav/CS
2.				
3.				
4.				
5.				
6.				

I. Summary:

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

The bill expands an exemption from clinic licensure for entities that provide health care services by licensed practitioners solely within a hospital. The bill provides an exemption from clinic licensure under the Health Care Clinic Act for clinical facilities that are wholly owned, directly or indirectly, by a publicly traded corporation. The bill defines a publicly traded corporation to mean one that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

The bill requires the Agency for Health Care Administration (AHCA or agency) to conduct, pursuant to clinic licensure, a background screening of any person with a financial interest in a clinic that has control or approval authority over clinic billing, policies, business activities, or personnel decisions, including third party billing persons, managers, and management companies; or any person that provides anything of value exceeding a total of \$5,000. The agency is given rulemaking authority to administer the background-screening requirement.

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

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

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

The bill specifies that all charges or reimbursement claims made by or on behalf of a clinic that is required to obtain a certificate of exemption, but that is not exempt, or that is operating in violation of part II of ch. 408 are unlawful charges. The bill places a 2-year expiration date on each certificate of exemption and provides that the certificate of exemption may be renewed.

The bill makes it a felony of the third degree to submit an application for licensure, which contains fraudulent or material and misleading information. The bill makes intentionally providing false information on an application for a certificate of exemption from clinic licensure grounds for disciplinary action pursuant to s. 456.072, F.S.

The bill creates s. 400.9936, F.S., to establish separate requirements under the Health Care Clinic Act for diagnostic testing facilities. It limits who must undergo background screening and allows a medical director or clinic director to serve as director of a maximum of five clinics. It also provides a distance limitation by requiring that no clinic may be located more than 300 miles from any other clinic supervised by the medical director or clinic director. It provides for waivers of these limitations and allows any variance in existence for a diagnostic testing facility as of May 1, 2007, to remain in effect for the term of the variance.

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

This bill creates s. 400.9936, F.S.

II. Present Situation:

Health Care Clinic Act - Clinic Licensure

Part XIII of ch. 400, F.S., contains the Health Care Clinic Act (ss. 400.990-400.995, F.S.). Under the act, the AHCA licenses health care clinics, ensures that such clinics meet basic standards, and provides administrative oversight. Any entity that meets the definition of a “clinic” (an entity at

which health care services are provided to individuals and charges for reimbursement for such services) must be licensed as a clinic.¹ The definition of clinic includes mobile clinics² and portable equipment providers.³

Every entity that meets the definition of a “clinic” must maintain a valid license with the AHCA at all times, and each clinic location must be licensed separately. A clinic license lasts for a 2-year period. The fees payable by each clinic to the AHCA for licensure cannot exceed \$2,000, adjusted for changes in the Consumer Price Index for the previous 12 months. Each clinic must file in its application for licensure information regarding the identity of the owners, medical providers employed, and the medical director and proof that the clinic is in compliance with applicable rules. The clinic must also present proof of financial ability to operate a clinic. A level 2 background screening pursuant to ch. 435, F.S., is required of each applicant for clinic licensure. A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense prohibited under the level 2 standards for screening or a violation of insurance fraud under s. 817.234, F.S., within the past 5 years.

Each clinic must have a medical director or clinic director who agrees in writing to accept legal responsibility pursuant to s. 400.9935, F.S., for the following activities on behalf of the clinic:

- A sign identifying the medical director that is readily visible to all patients;
- Ensuring that all practitioners providing health care services or supplies to patients maintain a current, active, and unencumbered Florida license;
- Reviewing patient referral contracts or agreements made by the clinic;
- Ensuring that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided;
- Serving as the clinic records owner;
- Ensuring compliance with the recordkeeping, office surgery, and adverse incident reporting requirements of ch. 456, F.S., the respective practice acts, and rules adopted under the Health Care Clinic Act; and
- Conducting systematic reviews of clinic billings to ensure billings are not fraudulent or unlawful. If an unlawful charge is discovered, immediate corrective action must be taken.⁴

¹ Section 400.9905(4), F.S.

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

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

⁴ If the clinic performs only the technical component of a magnetic resonance imaging (MRI), static radiograph, computed tomography (CT scan), or positron emission scan (PET scan), and provides the professional interpretation of such services in a fixed facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Accreditation Association for Ambulatory Health Care (AAA) and the American College of Radiology (ACR), and the percentage of scans in the preceding quarter that were billed to a PIP insurance carrier is under 15 percent, the chief financial officer of the clinic may assume the responsibility for the conduct of systematic reviews of clinic billings to ensure they are not fraudulent or unlawful. See s. 400.9935(1)(g), F.S.

Licensed clinics are subject to unannounced inspections of the clinic by the AHCA personnel to determine compliance with the Health Care Clinic Act and applicable rules. The clinic must allow full and complete access to the premises and to billing records. The agency may deny, revoke, or suspend a health care clinic license and impose administrative fines of up to \$5,000 per violation pursuant to s. 400.995, F.S.

Health Care Clinic Act - Exemption from Licensure

Although all clinics must be licensed with the AHCA, s. 400.9905(4), F.S., contains a lengthy list of entities that are not considered a “clinic” for the purposes of clinic licensure. An entity that is licensed in Florida pursuant to various chapters specified⁵ in s. 400.9905(4)(a) - (4)(d), F.S., may be exempt from clinic licensure if it meets one of the following provisions:

- The entity is licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license;⁶
- It is an entity that owns, directly or indirectly, an entity licensed or registered by the state under one or more of the specified practice acts that only provides services within the scope of its license;
- It is an entity that is owned, directly or indirectly, by an entity licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license; or
- An entity is under common ownership, directly or indirectly, with an entity licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license.

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

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

Similarly, a sole proprietorship, group practice, partnership or corporation that provides health care services by licensed health care practitioners under specified practice acts⁷ is also eligible

⁵ The licensures that permit an entity to be exempt from clinic licensure are licensures for: Hospitals (ch. 395, F.S.); Birthing Centers (ss. 383.30-383.335, F.S.); Termination of Pregnancy/Abortion (ch. 390, F.S.); Mental Health (ch. 394, F.S.); Substance Abuse (ch. 397, F.S.); ch. 400, F.S., licensure, except for licensure under the Health Care Clinic Act; Optometry (ch. 463, F.S.); Pharmacy (ch. 465, F.S.); Dentistry (ch. 466, F.S.); Electrolysis (ch. 478, F.S.); Clinical Laboratories (part I of ch. 483, F.S.); Optical Devices and Hearing Aids (ch. 484, F.S.); and Continuing Care (ch. 651, F.S.). Other qualifying entities include end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; and an entity that provides neonatal or pediatric hospital based healthcare services by licensed practitioners solely within a hospital licensed under ch. 395, F.S.

⁶ See footnote 5.

for licensure. The entity must be wholly owned by one or more licensed health care practitioners⁸ or the practitioners and the spouse, parent, child or sibling of the licensed health care practitioner. One of the owners who is a licensed health care practitioner must supervise the business activities of the entity and ensure compliance with all federal and state laws. A health care practitioner is not permitted to supervise services beyond the scope of that practitioner's license.⁹ However, the entity may employ physicians and practitioners to perform and supervise health care services that are beyond the scope of the owner's licensure.

Exemptions from clinic licensure are also available for the following:

- An entity that is exempt from federal taxation under 26 U.S.C. sec. 501(c)(3) or sec. 501(c)(4);
- A community college or university clinic;
- An entity owned by the federal or state government, including agencies, subdivisions and municipalities;
- Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- Entities that provide only oncology or radiation therapy services by physicians licensed under chs. 458 or 459, F.S.; and
- Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

Health care providers and practitioners may voluntarily apply to the AHCA for a certificate of exemption under the act, but are not required to do so. Such providers find it useful to obtain a certificate of exemption to present to an insurance company, particularly a PIP insurer, to prove that the provider is not required to be licensed as a health care clinic.

Health Care and Personal Injury Protection Insurance Fraud; Interim Project Report

Staff of the Senate Banking and Insurance Committee produced an interim project report, *Florida's Motor Vehicle No-Fault Law*, (2006-102). The following is a summary of information contained in the report related to health care and PIP fraud.

Florida's Chief Financial Officer estimates that insurance fraud costs the average Florida family as much as \$1,500 a year in increased premiums and higher costs for goods and services. Motor

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

⁸ See footnote 7.

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

vehicle insurance fraud and abuse constitute a large part of these costs.¹⁰ Therefore, efforts to reduce fraud and abuse are critical to maintaining a viable no-fault insurance system in this state.

The fraud statistics indicate the severity of the challenge in enforcing personal injury protection fraud violations as the number of fraud referrals escalates. According to the Director of the Division of Insurance Fraud or (DIF), PIP fraud referrals have increased over 400 percent from 2002-2003 (615 referrals) to 2004-2005 (2,628).¹¹ The division is able to open less than 25 percent of these referrals, according to the division's director.

Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes,¹² manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering (referring patients to medical providers for a bounty), according to representatives with the division.

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

According to the DIF officials, the magnitude of the PIP fraud problem is illustrated by the large number of health care clinics established in Florida under the Health Care Clinic Act (Act). Current figures indicate that over 65 percent¹³ of the more than 2,435 medical clinics licensed by the AHCA statewide are located in Dade, Broward, and Palm Beach counties.¹⁴ Moreover, 4,590 clinics have received exemption certificates and are therefore subject to no state regulation. (This figure does not count the clinics that have decided not to file for an exemption certificate with the AHCA.) Division intelligence indicates that "hundreds" of these clinics have been established primarily in the South Florida area for the sole purpose of perpetrating PIP fraud, according to DIF officials.¹⁵ The types of crimes perpetrated by these clinics often involve

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

¹¹ The 2005 information is from January through July 2005.

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

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

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

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

fraudulent providers (who fabricate their credentials, bills, or the office itself);¹⁶ medical mills that provide treatments that are not medically necessary,¹⁷ purposely miscode diagnosis, inflate bills or charge for services that are not rendered; or “doc in the box” schemes where often older medical providers are paid for the use of their license.

Officials with the AHCA have found that various fraudulent motor vehicle insurance acts currently prohibited under part I of ch. 817, F.S., are not disqualifying offenses for clinic licensure. These crimes include presenting a false or fraudulent motor vehicle insurance application to an insurer; presenting a false or fraudulent vehicle insurance card; and obtaining a motor vehicle with the intent to defraud. Adding these criminal provisions to the Act would prohibit persons convicted of these motor vehicle crimes from obtaining a clinic license.

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

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

Federal Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002,¹⁸ sponsored by US Senator Paul Sarbanes and US Representative Michael Oxley, represented one of the biggest changes to federal securities laws in recent history. The enactment of this law came as a result of the large corporate financial scandals involving Enron, WorldCom, Global Crossing and Arthur Anderson. The law essentially established that effective in 2006, all publicly-traded companies would be required to submit an annual report of the effectiveness of their internal accounting controls to the Securities and Exchange Commission (SEC).

Provisions of the Sarbanes-Oxley Act detail criminal and civil penalties for noncompliance, certification of internal auditing and increased financial disclosure. All public U.S. companies and non-U.S. companies with a U.S. presence must comply with this law, the essence of which relates to corporate governance and financial disclosure. Federal oversight is primarily under the jurisdiction of the Public Company Accounting Oversight Board (PCAOB) under the SEC, which can impose specified civil and criminal penalties for noncompliance. In addition to lawsuits, a corporate officer who does not comply with this law or submits an inaccurate certification is subject to a fine up to \$1 million and 10 years in prison, even if done mistakenly.

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

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

¹⁸ See www.sarbanes-oxley-101.com (last visited April 17, 2007).

If an incorrect certification was submitted purposely, the fine can be up to \$5 million and 20 years in prison.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.9905(4), F.S., to modify the criteria under which certain health care providers and practitioners are exempt from licensure under the Health Care Clinic Act. The bill amends s. 400.9905(4)(a), F.S., to provide an exemption to the definition of “clinic” for entities providing services solely within a hospital licensed under ch. 395, F.S.

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

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

Paragraph (l) of s. 400.9905(4), F.S., is also amended by the bill. It provides an exemption from clinic licensure under the Health Care Clinic Act for clinical facilities that are wholly owned, directly or indirectly, by a publicly traded corporation. The bill defines a publicly traded corporation to mean one that issues securities traded on an exchange registered with the SEC as a national securities exchange.

Section 2. Amends s. 400.991, F.S., to increase the scope of a background screening. The bill amends subsection (5) to require the AHCA to conduct background screening of any person who has a financial interest in a clinic. Persons with a financial interest in a clinic include persons who may or may not own stock or an equivalent interest in the clinic, but nonetheless have control over or the authority to approve, directly or indirectly, clinic billing, policy, business activities, or personnel decisions. Such control or authority includes but is not limited to contracted or employed third-party billing persons or entities, managers, and management companies, as well as persons and entities that directly or indirectly lend, give or gift money of any denomination or anything of value exceeding an aggregate of \$5,000, for clinic use, with or without an expectation of a return of the money or thing of value, and regardless of profit motive. The bill gives the AHCA authority to adopt rules to implement subsection (5).

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

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

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

The bill increases from 5 to 10 years the time period that an applicant must be free of the disqualifying conduct set forth in s. 400.991(7), F.S. Each person required to provide a background screening for clinic licensure may be required to disclose to the AHCA any arrest for

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

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

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

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

A new subsection (10) is added to this section to make it a felony of the third degree to submit an application for licensure, which contains fraudulent or material and misleading information.

Section 3. Amends s. 400.9935, F.S., to require the medical or clinic director of a clinic to ensure that all practitioners providing health care services or supplies to patients at the clinic do not provide such services or supplies outside the scope of their license or as otherwise prohibited by law.

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

The bill specifies that all charges or reimbursement claims made by or on behalf of a clinic that is required to obtain a certificate of exemption, but that is not exempt, or that is operating in violation of part II of ch. 408 are unlawful charges. The bill adds that those found committing a felony in the third-degree will be punishable as provided also in part II of ch. 408, F.S., or rules adopted pursuant to either part. The bill provides that a certificate of exemption is valid for two years and may be renewed.

Section 4. Creates s. 400.9936, F.S., to establish separate requirements under the Health Care Clinic Act for diagnostic testing facilities. The bill defines “diagnostic testing facility.” It limits who must undergo background screening and allows a medical director or clinic director to serve as director of a maximum of five clinics. The bill also provides a distance limitation by requiring that no clinic may be located more than 300 miles from any other clinic supervised by the medical director or clinic director. The bill provides for waivers of these limitations. The bill allows any variance in existence for a diagnostic testing facility as of May 1, 2007 to remain in effect for the term of the variance.

Section 5. Amends s. 456.072, F.S., to provide that intentionally providing false information on an application for a certificate of exemption from clinic licensure under part XIII of ch. 400, F.S., constitutes a ground for disciplinary action as provided in that section, such as suspension or revocation of a license.

Section 6. The bill takes effect on October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

The bill is likely to increase the number of entities required to obtain licensure as a health care clinic, subjecting them to additional costs, requirements, and oversight by the AHCA. An entity seeking to retain a certificate of exemption will have to re-apply for a renewal of the certificate every 2 years, paying the \$100 application fee each time.

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

C. Government Sector Impact:

To process the additional license application information, the agency central office needs additional staff. To process the additional fingerprint cards generated by the additional licenses and disclosure requirements, the background screening unit will need one human services program specialist.

Funding for the additional FTEs and expenditures will come from revenues anticipated from additional licenses and exemption certificates. Funds will be deposited in the Health Care Trust Fund. The agency is reviewing the fiscal impact to reflect the changes made in the committee substitute.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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