SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1910

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Garcia

SUBJECT: Medical Practice

DATE: April 11, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.			CJ	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

The bill requires individuals or entities who are not Florida-licensed allopathic or osteopathic physicians, chiropractic physicians, podiatric physicians, physician assistants, or advanced registered nurse practitioners, who possess an ownership interest in a clinic to register with the Department of Health within 60 days after October 1, 2001. Clinics that are not exempt must comply with the bill's requirements to employ or contract with a medical director who is a Florida-licensed physician or with a clinical director who is a Florida-licensed health care practitioner.

A clinic licensed or registered under chapters 390 (abortion), 394 (mental health), 395 (hospitals), 397 (substance abuse services), 400 (nursing homes), 463 (optometry), 465 (pharmacy), 466 (dental), 478 (electrolysis), 480 (massage), or 484 (optical/ hearing aid specialist), Florida Statutes, or that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) of the Tax Code is exempt from the bill's requirements. The bill exempts a sole or group practice, partnership, or corporation that provides health care services by licensed health care practitioners as defined in s. 456.001(4), F.S., in accordance with their practice act, only if the following conditions are met: the clinic must be jointly owned by licensed health care practitioners and the spouse, parent, or child of a licensed health care practitioner, and the licensed health care practitioners are legally responsible for the clinic's compliance with all federal and state laws.

The bill requires all clinics that are not otherwise exempt to register with the Department of Health. The Department of Health must adopt rules to implement a registration program, including rules prescribing registration fees. The fees must not exceed an amount that will provide sufficient revenue to administer the registration program.

The bill requires a medical director or clinical director to be responsible for activities on behalf of the clinic and specifies the duties of the medical director or clinical director of such clinic.

Any person knowingly operating or managing an unregistered clinic commits a third degree felony. A third degree felony carries a maximum prison sentence of 5 years and a maximum fine of $5,000. The Department of Health must revoke the registration of clinics found to be in violation of the provisions of the bill. Also, a violation by a licensed health care practitioner would be grounds for discipline under ch. 456, F.S., and the practice act of that practitioner. All charges or any reimbursement claims made by or on behalf of unregistered clinics are considered to be unlawful charges and therefore be noncompensable and unenforceable. The bill makes any contract to serve as a medical director or clinical director entered into or renewed by a physician or licensed health care practitioner after October 1, 2001, that violates the provisions of the bill void.

This bill creates section 456.0375, Florida Statutes.

II. Present Situation:

The Practice of Medicine

Chapter 458, Florida Statutes, governs the regulation of the practice of medicine by the Board of Medicine. Section 458.305, F.S., defines the "practice of medicine" to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition. The Board of Medicine within the Department of Health regulates the practice of medical physicians. Section 458.331, F.S., specifies grounds for which a medical physician may be subject to discipline by the Board of Medicine. A medical physician is subject to discipline for any act in violation of applicable standards of practice, which include gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment that is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.[1] A medical physician is also subject to discipline for practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the licensee knows or has reason to know he or she is not competent to perform.

The board may establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications, including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.[2] Pursuant to subsection 458.331(3), F.S., in any administrative action against a physician that does not involve revocation or suspension of his or her license, the division (Department of Health) shall have the burden, by the greater weight of the evidence, to establish the existence of grounds for disciplinary action. The division shall establish grounds for revocation or suspension of a license by clear and convincing evidence. A medical physician may be subject to discipline for aiding, assisting, procuring, or advising any

[1] Section 458.331(1)(t), F.S.
[2] Section 458.331(1)(v), F.S.

unlicensed person to practice medicine contrary to the medical practice act or to any administrative rule adopted by the Department of Health or the Board of Medicine.

The Board of Medicine has adopted an administrative rule that provides standards of care and standards of practice that licensed physicians and physician assistants must follow.[3] Under the rule, licensed physicians and physician assistants must provide their patients appropriate medical care under sanitary conditions and must ensure that medical care is provided pursuant to informed consent, adequately documented and lawfully billed to patients and/or payors and that persons assisting in the delivery of medical care to their patients are licensed, certified, and/or supervised as required by law. Licensed physicians and physician assistants may not delegate or reasonably rely on others to ensure compliance with these patient responsibilities. Licensed physicians and physician assistants who practice in a setting other than a hospital or other facility licensed under ch. 395 or 400, F.S., or a federally qualified health clinic or other state or federally regulated program or setting that is not under the *ownership and control* of an actively licensed Florida physician who is responsible for ensuring that the requirements for appropriate medical care are followed, may only do so if the physician in charge has filed a notarized statement on a form approved by the board. The physician in charge must attest that he or she accepts the following responsibilities on behalf of one or more named licensed physicians or physician assistants in the practice setting: (1) ensure that all staff in the practice setting are appropriately licensed as required by law; (2) ensure that any medical services are appropriately supervised as required by law; (3) ensure that the practice setting complies with applicable regulations and board rules; and (4) that he or she reviews billing to ensure that the billings are not fraudulent.

The Practice of Osteopathic Medicine

Chapter 459, F.S., the osteopathic medical practice act, similarly provides for the regulation of osteopathic physicians by the Board of Osteopathic Medicine in the Department of Health. Section 459.003, F.S., defines the "practice of osteopathic medicine" to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health. Chapter 459, F.S., contains provisions relating to the definition of practice and discipline of licensed osteopathic physicians, which are comparable to those in the medical practice act.[4]

[3] Rule 64B8-9.0075, Florida Administrative Code, effective November 13, 2000.

[4] See s. 459.015 (1)(x), F.S., An osteopathic physician is subject to discipline for any act in violation of applicable standards of practice, which include gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment that is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. Under s. 459.015(1)(z), F.S., an osteopathic physician is also subject to discipline for practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know he or she is not competent to perform. The Board of Osteopathic Medicine may establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications, including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.

Grand Jury Findings - Insurance Fraud Related to Personal Injury Protection

The Fifteenth Statewide Grand Jury issued a report in September 2000, examining insurance fraud related to personal injury protection (PIP) coverage.[5] The Grand Jury report defined PIP fraud as follows: *1) the illegal solicitation of accident victims for the purpose of filing for PIP benefits and motor vehicle tort claims; 2) brokering patients between doctors, lawyers and diagnostic facilities, as well as attendant fraud, which can include the filing of false claims; 3) billing insurers for treatment not rendered; 4) using phony diagnostic tests or misusing legitimate tests; 5) inflating charges for diagnostic tests or procedures through brokers; and 6) filing fraudulent motor vehicle tort lawsuits.* According to the Grand Jury, "certain people have turned the $10,000 of personal injury protection coverage into their own personal slush fund."

The Statewide Grand Jury made seven recommendations to the Florida Legislature:

- Require the regulation and licensing of all medical facilities.
- Consider adopting a fee schedule for reimbursement of medical services under the personal injury protection statute.
- Give insurers an additional 30 days to pay personal injury protection claims, at least in those instances where the insurer certifies that the claim is being reviewed for possible fraud.
- Make all charges for magnetic resonance imaging (MRIs) tests unenforceable unless the charges are billed and collected by the 100-percent owner or the 100-percent lessee of the equipment used to perform such services. This will remove incentives for brokering.
- Amend s. 817.234(8), F.S., to state that no insurer or auto accident victim is obligated to pay for any services rendered by any medical provider or attorney who has solicited the victim or caused the victim to be solicited contrary to Florida Statutes.
- Prohibit the release of accident reports to anyone other than the victim, their insurance company, a radio or TV station licensed by the FCC, or a professional journalist.
- Increase the penalty as to persons who violate the accident report provision from a first-degree misdemeanor to a third degree felony.

The Grand Jury investigation revealed that individuals called "runners" collect accident reports, which are public records, from law enforcement agencies and use the information to solicit persons involved in accidents or give the information to another person who solicits the victims. Other runners, according to the Grand Jury, print the information in "accident journals" sold to medical providers and attorneys who solicit persons involved in accidents.

Once the accident victim is solicited by the runner, the victim is sent to an unscrupulous medical person who provides a variety of diagnostic tests, characterized by the Grand Jury as "extremely profitable tests of marginal utility or validity," such as nerve conduction studies or video fluoroscopy. The Grand Jury found that "because there is no fee schedule set by the government in PIP claims, and because of the strict rules regarding PIP claims, insurance companies must pay almost any amount billed."

[5] To view the Grand Jury report and recommendations in its entirety, go to the web site for the Statewide Prosecutor's office under the Attorney General (http://legal.firn.edu/swp/jury/fifteenth.html) and select the Report on Insurance Fraud Related To Personal Injury Protection.

The brokering of certain medical tests also concerned the Grand Jury because individuals have formed magnetic resonance imaging (MRI) brokerage businesses, which negotiate deals with MRI facilities to perform MRI tests and then bill out these same tests to an insurance company for more than the test actually costs. These MRI brokers, according to the Grand Jury, provide no real service other than scheduling an appointment for the accident victim, yet charge that insurance company as if the broker is the actual facility administering the MRI exam. A recent article in the New York Times echoed this problem stating that such "imaging brokers" were behind a "growing number of abusive and often fraudulent charges in the treatment of auto accident victims in Florida."[6] Further, such practices were "a major reason injury claims in several states are rising at three times the rate of medical costs in general."

Personal injury protection claims must be paid within 30 days or the claim is considered overdue and the insurer will be liable in a suit to recover these personal injury protection benefits. The insurer will also be responsible for paying a plaintiff's legal fees, which can add thousands to the amount of the settlement, according to the Grand Jury. The Grand Jury stated that, "doctors and chiropractors who engage in patient brokering and solicitation generally have relationships with one or more lawyers who file suit on the 31st day, if the claim is not paid." Further, "unethical lawyers will often refer clients to a doctor or chiropractor they know will make a finding that their client has been permanently injured. Such a finding is crucial under Florida law because it allows the insured to sue for pain and suffering and thereby recover much more money than simply reimbursement for medical treatment."

The Statewide Grand Jury made two recommendations to Professional Groups:

- Place more emphasis on the unprofessional practice of patient brokering and kickbacks in their continuing education curriculum.
- Recognize the existence and extent of the problem and demonstrate the organizations' intolerance for such behavior, and potential for censure.

The Statewide Grand Jury made three recommendations to the Board of Chiropractic Medicine:

- Proactively identify and discipline chiropractors engaged in patient brokering or solicitation.
- Impose greater discipline on those caught engaged in patient brokering or solicitation including the greater use of license revocation as a penalty.
- Ask for more resources, including prosecutors, to commit to the investigation and discipline of chiropractors engaged in patient brokering and solicitation.

In conclusion, the Grand Jury stated that the Legislature, the Department of Insurance, the medical boards, the Florida Bar, the insurance industry, law enforcement and prosecutors must work together to find innovative solutions. The Grand Jury made additional findings and recommendations as to professional discipline for licensed medical professionals and attorneys.[7]

[6] New York Times, March 22, 2001.

[7] Under the rules of the Florida Bar, attorneys are prohibited from soliciting clients "when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." Further, attorneys are prohibited from making written solicitations of

Corporate Practice of Medicine

The "*corporate practice of medicine*" doctrine has historical roots in the ethical restrictions imposed by professional organizations, such as the American Medical Association, which prohibited the lay control of the practice of its members. The *corporate practice of medicine* doctrine prohibits any entity not licensed by the state as a medical physician or otherwise exempt from the medical physician licensure requirements from practicing medicine. Medical practice acts generally do not expressly prohibit the *corporate practice of medicine* although such acts limit the practice of medicine to any person who has met specified licensure requirements or who otherwise is exempt from the licensure requirements.

The American Medical Association's adoption of ethical restrictions which prevented corporations from employing physicians or owning physician practices was based on policy concerns regarding its potential interference with adequate medical care or reasonable competition among physicians. Early court decisions in a few states have created a common law ban to the *corporate practice of medicine* based on policy concerns articulated by the American Medical Association which prevented physician-members from practicing under business arrangements involving employment by laypersons by contract or from practicing under the corporate form.

Without an explicit statutory ban, courts have created a common law ban on the corporate practice of medicine by interpreting the medical practice act. Consistent with this interpretation, any entity which is not licensed by the state as a medical physician or otherwise legally authorized to practice medicine is prohibited from practicing medicine. The *corporate practice of medicine* doctrine relies on an argument that a corporation may not obtain state licensure to practice medicine and is not otherwise legally authorized to practice medicine.

The *corporate practice of medicine* doctrine has gone unenforced in many states with a few exceptions. A statutory or common law ban prohibiting corporations from employing physicians exists in many states. California and Illinois both actively and regularly enforce a common law ban on the corporate practice of medicine. Texas has a statutory ban on the corporate practice of medicine.

Even in the states that enforce a legal ban on the *corporate practice of medicine*, exceptions have been created to authorize physician practice in nonprofit corporations, medical schools, hospitals, health maintenance organizations, and to authorize other licensed health care professionals to perform personal services. Another exception, adopted in virtually all states, allows health care professionals to practice in a variety of business forms (professional corporations, partnerships, and group practices). During the 1960s, states passed legislation to allow licensed health care professionals who previously were not permitted to practice as corporate entities to practice in professional corporations. Due to the personal nature of the services involved, health care professionals had been forbidden by law, regulation, or code of ethics to practice in the corporate form.

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accident and natural disaster victims concerning claims for personal injury or wrongful death within 30 days of the accident or natural disaster. See Rule 4-7.4, Rules Regulating the Florida Bar.

In 1961, Florida authorized licensed health care professionals, including medical physicians to practice under a corporate entity with the passage of the Professional Services Corporation Act codified in ch. 621, F.S. The Professional Services Corporation Act[8] provided that all laws in conflict with the act are repealed, and in effect, it repealed any statute that prohibited professions from practicing under a corporate entity. The Professional Services Corporation Act does not apply to any individual or group of individuals who, prior to its passage, were permitted to organize and perform personal services as a corporation.

Under ch. 621, F.S., a "professional services corporation" is defined to mean a corporation which is organized for the sole and specific purpose of rendering professional services and which has as its shareholders only other professional corporations, professional limited liability companies, or individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the corporation. "Professional service" is defined to mean any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. Under the Professional Services Corporation Act, all shareholders must be licensed members of the profession or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated, but does not specifically require the officers or directors of corporations to be members of the same profession.

Florida law bans lay corporations, with few exceptions, from employing licensed optometrists and dentists. The optometry practice act[9] provides that no corporation, lay body, organization, or individual other than a licensed practitioner shall engage in the practice of optometry through the means of engaging the services, upon a salary, commission, or other means of inducement, of any person licensed to practice optometry in Florida. The optometric practice act prohibits a licensed practitioner from engaging in the practice of optometry with any corporation, organization, group, or lay individual. The dental practice act[10] provides that no person other than another licensed dentist or any professional corporation or limited liability company composed of dentists may employ a dentist or dental hygienist in the operation of a dental office. The dental practice act notes that the purpose of s. 466.0285, F.S., is to prevent a nondentist from influencing or otherwise interfering with exercise of a dentist's independent professional judgment.

In contrast to the practice of optometry and dentistry, Florida does not have a legal ban on the corporate employment of a medical or osteopathic physician if the physician maintains his or her independent professional judgment. In *Rush v. City of Petersburg*, 205 So.2d 11 (Fla. Dist. Ct. App. 1967), the circuit court in Pinellas County dismissed the complaint where a physician sought to enjoin the City of Petersburg and a licensed physician from performance of a contract between the parties on the ground that performance of the contract would result in the illegal corporate practice of medicine. On appeal, the Second District Court of Appeal held that the City of St. Petersburg did not exceed its authority in contracting with a physician to assure radiological services at a hospital operated by the City. The court held that performance of the contract did not result in the unauthorized practice of medicine by the hospital or the City of St.

[8] Section 621.15, Florida Statutes (1961).
[9] Section 463.014(1)(a), Florida Statutes.
[10] Section 466.0285, Florida Statutes.

Petersburg. Underlying the court's rationale was whether the relationship between the contracted physician and patients of the hospital operated by the City has been so destroyed as to allow the hospital to become the medical practitioner. The court applied a test previously used by the Florida Supreme Court in *Watson v. Centro Espanol De Tampa*, 30 So.2d 288 (Fla. 1947) as to whether the hospital operated by the City of Petersburg had engaged in the unauthorized practice of medicine:

> The test of whether or not one is practicing medicine within the meaning of [the medical practice act] is whether or not he holds himself out as being able to 'diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition or who shall offer or undertake by any means or method to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition.

The court found that there was no unauthorized practice of medicine absent a showing that either the hospital or city directed the physician as to the methods used in diagnosing or treating patients. The court decision does not clarify whether the relationship of employee-employer or independent contractor between the hospital and the contracted physician would be determinative of a right to control that would constitute the unauthorized practice of medicine. The court in *Rush* implies that if a hospital exercised control over the methods used by a licensed physician to diagnose or treat patients, then the hospital would be engaged in the illegal practice of medicine. Under *Rush*, there is no legal ban on the corporate practice of medicine in Florida to the extent a physician maintains independent professional judgment in the practice of medicine.

Health Maintenance Organizations

There are four basic models of health maintenance organizations (HMOs): group model, independent practice association, staff model, and mixed model.

A group model HMO is an HMO made up of one or more physician group practices that are not owned by the HMO, but that operate as independent partnerships or professional corporations. The HMO pays the groups at a negotiated rate, and each group is responsible for paying its doctors and other staff, and for paying for hospital care or care from outsides specialists.

An Independent Practice Association (IPA) generally includes large numbers of individual private practice physicians who are paid either a fee or fixed amount per patient to take care of the IPA's members.

A staff model HMO is an HMO in which the doctors and other medical professionals are salaried employees of the HMO, and the clinics or health centers in which they practice are owned by an the HMO.

A mixed model HMO is a health plan that includes more than one of the above models within a single plan. For instance, a staff model HMO might also contract with independent physician groups or with individual physician groups or with individual private practice physicians.

Health maintenance organizations are regulated under parts I and III of ch. 641, F.S., by the Department of Insurance and the Agency for Health Care Administration.

III. Effect of Proposed Changes:

The bill creates s. 456.0375, F.S., to impose requirements on clinics. The term "clinic" is defined to mean a business operating in a single structure or facility or group of adjacent structures or facilities operating under the same business name or management at which health care services are provided to individuals and for which the clinic tenders charges for reimbursement for such services. Such a clinic must register with the Department of Health (DOH), unless the business is:

1. Otherwise licensed or registered under chapters 390 (abortion), 394 (mental health), 395 (hospitals), 397 (substance abuse services), 400 (nursing homes), 463 (optometry), 465 (pharmacy), 466 (dental), 478 (electrolysis), 480 (massage), or 484 (optical), Florida Statutes, or is exempt from federal taxation under 26 U.S.C. 501(c)(3) of the Tax Code; or

2. A sole or group practice, partnership, or corporation that provides health care services by licensed health care practitioners as defined in s. 456.001(4), F.S., in accordance with their practice act, only if the following conditions are met: the clinic must be jointly owned by licensed health care practitioners and the spouse, parent, or child of a licensed health care practitioner, and the licensed health care practitioners are legally responsible for the clinic's compliance with all federal and state laws.

A clinic in which an entity or individual possesses an ownership interest, other than a physician licensed under ch. 458 (medicine), 459 (osteopathic medicine), 460 (chiropractic medicine), or 461 (podiatric medicine), a physician assistant, or an advanced registered nurse practitioner certified under s. 464.012, F.S, and each clinic location must register with the Department of Health. These clinics also would be required to employ or contract with a physician to be the medical director or a licensed health care practitioner to serve as the clinical director. Clinics owned jointly by physicians and their spouses, parents, or children, would not be required to register as long as the physician supervises the services performed at the clinic and is legally responsible for the clinic's compliance with all federal and state laws.

Registration - Registration requirements include filing a registration form, which would include the name, residence, and business address, phone number, and license number of the medical director or clinical director for the clinic, with the Department of Health and displaying a registration certificate within the clinic. Registration fees must reasonably cover the cost of registration and may not exceed the cost to administer and enforce compliance. The clinic is required to file the registration form with the Department of Health within 60 days after October 1, 2001, or prior to the inception of operation. The registration expires automatically 2 years after its date of issuance and must be renewed biennially.

Medical Director/Clinical Director - Clinics not owned by Florida-licensed physicians or an entity other than a professional corporation or limited liability company composed only of fully licensed physicians must employ or contract with a physician with a full and unencumbered license as medical director or with a licensed health care practitioner to serve as the clinical director who is responsible for activities in accordance with her or his practice act. A medical director or clinical director must agree in writing to accept responsibility for the activities on behalf of the clinic. Responsibilities of the medical director or clinical director would include

having signs identifying the medical director or clinical director posted in the clinic in a conspicuous location which are readily visible to all patients; ensuring all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license; reviewing any patient referral contracts or agreements executed by the clinic; ensuring 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 as defined under s. 456.057, F.S.; ensuring compliance with medical record keeping, office surgery, and adverse incident reporting requirements; and conducting systematic reviews of clinic billings to ensure billings are not fraudulent or unlawful. The bill provides that contracts entered into or renewed by a physician or licensed health care practitioner in violation of the provisions of the bill are void. The bill applies to contracts entered into or renewed on or after October 1, 2001.

Rulemaking Authority - The Department of Health must adopt rules necessary to administer the registration program, including rules establishing the specific registration procedures, forms, and fees. The Department of Health, in consultation with the boards, must adopt rules specifying the limitations on the number of registered clinics and licensees that may be supervised by a single medical director or clinical director. In determining the quality of supervision a medical director or clinical director can provide, the department must consider the number of clinic employees, the clinic location, and the services provided by the clinic. The department must revoke the registration of any registered clinic for operating in violation of the requirements of the bill.

Violations - Any person knowingly operating or managing an unregistered clinic commits a third degree felony. A third degree felony carries a maximum prison sentence of 5 years and a maximum fine of $5,000. The Department of Health must revoke the registration of clinics found to be in violation of the provisions of the bill. Also, a violation of the provisions of the bill by a licensed health care practitioner would be grounds for discipline under ch. 456, F.S., and the practice act of that practitioner. All charges or any reimbursement claims made by or on behalf of unregistered clinics are considered to be unlawful charges and therefore be noncompensable and unenforceable.

The bill provides an effective date of October 1, 2001.

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 Art. VII, s. 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 Art. I, s. 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 Art. III, s. 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The bill requires the Department of Health to revoke the registration of any registered clinic for operating in violation of the requirements of the bill. The bill does not provide any specific criteria by which the department would determine whether a violation in the operation or management of a clinic occurred in the exercise of its delegated legislative authority. The bill does not appear to expressly provide sufficient limitation on the department's authority to revoke a clinic's registration.

Article II, Section 3 of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. The Florida Supreme Court has acknowledged that "Where the Legislature makes a fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguard, there is no violation of the [Delegation of Powers] doctrine." *Askew v. Cross Key Waterways*, 372 So.2d 913 at 921 (Fla. 1978).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons or entities that operate a clinic as defined by the bill that are not otherwise exempt from the registration requirements and who must register with the Department of Health will incur an indeterminate registration fee and be subject to criminal penalties established in the bill for failure to do so. The bill creates an offense for knowingly operating or maintaining a clinic that is punishable as a third degree felony. A third degree felony carries a maximum prison sentence of 5 years and a maximum fine of $5,000. Persons or entities who are not otherwise exempt that operate a clinic will incur costs to employ or contract with a physician to serve as medical director or a licensed health care practitioner to serve as clinical director for the clinic.

C. Government Sector Impact:

The Department of Health will incur costs to implement a registration program for clinics.

The Department of Health will incur additional costs to refer criminal violations regarding unregistered clinics of which it is aware to the appropriate prosecuting authority.

Any person who knowingly operates or manages an unregistered clinic commits a third degree felony. A third degree felony carries a maximum prison sentence of 5 years and a maximum fine of $5,000. Consequently, the bill could have an impact on the courts, county jails and state prison system. The Criminal Justice Estimating Conference is statutorily charged with reviewing the potential impact of newly created crimes on the state prison

system. As of April 11, 2001, the Conference has not reviewed this bill's prison bed impact. Staff anticipates that the Conference will conclude that this bill's impact will be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.