

1 A bill to be entitled
2 An act relating to health care; providing
3 legislative findings and intent; amending s.
4 456.072, F.S., relating to grounds for
5 discipline, penalties, and enforcement
6 applicable to health care practitioners;
7 providing that a practitioner's failure to
8 disclose his or her training in health care
9 advertisements and in professional
10 relationships with patients constitutes grounds
11 for disciplinary action; providing exceptions;
12 providing penalties; specifying that a
13 reference to the section constitutes a general
14 reference under the doctrine of incorporation
15 by reference; amending s. 409.907, F.S.;
16 providing criteria for establishing the
17 effective date of approval of certain
18 applications to be a Medicaid provider;
19 requiring the agency to develop a uniform
20 application process for Medicaid providers who
21 serve recipients through Medicaid waiver
22 programs; providing criteria; amending s.
23 468.352, F.S.; revising and providing
24 definitions applicable to the regulation of
25 respiratory therapy; amending s. 468.355, F.S.;
26 revising provisions relating to respiratory
27 therapy licensure and testing requirements;
28 amending s. 468.368, F.S.; revising exemptions
29 from respiratory therapy licensure
30 requirements; repealing s. 468.356, F.S.,
31 relating to the approval of educational

1 | programs; repealing s. 468.357, F.S., relating
2 | to licensure by examination; amending s.
3 | 400.9905, F.S.; revising the definitions of
4 | "clinic" and "medical director" and defining
5 | "mobile clinic," "portable equipment provider,"
6 | and "chief financial officer," for purposes of
7 | the Health Care Clinic Act; providing that
8 | certain entities providing oncology or
9 | radiation therapy services are exempt from the
10 | licensure requirements of part XIII of ch. 400,
11 | F.S.; providing legislative intent with respect
12 | to such exemption; providing for retroactive
13 | application; amending s. 400.991, F.S.;
14 | requiring each mobile clinic to obtain a health
15 | care clinic license; requiring a portable
16 | equipment provider to obtain a health care
17 | clinic license for a single office and
18 | exempting such a provider from submitting
19 | certain information to the Agency for Health
20 | Care Administration; revising the date by which
21 | an initial application for a health care clinic
22 | license must be filed with the agency; revising
23 | the definition of "applicant"; amending s.
24 | 400.9935, F.S.; providing that an exemption
25 | from licensure is not transferable; providing
26 | that the agency may charge a fee of applicants
27 | for certificates of exemption; providing that
28 | the agency may deny an application or revoke a
29 | license under certain circumstances; amending
30 | s. 400.995, F.S.; providing that the agency may
31 | deny, revoke, or suspend specified licenses and

1 | impose fines for certain violations; providing
2 | that a temporary license expires after a notice
3 | of intent to deny an application is issued by
4 | the agency; providing that persons or entities
5 | made exempt under the act and which have paid
6 | the clinic licensure fee to the agency are
7 | entitled to a partial refund from the agency;
8 | providing that certain persons or entities are
9 | not in violation of part XIII of ch. 400, F.S.,
10 | due to failure to apply for a clinic license by
11 | a specified date; providing that certain
12 | payments may not be denied to such persons or
13 | entities for failure to apply for or obtain a
14 | clinic license before a specified date;
15 | assigning responsibilities for ensuring
16 | billing; amending s. 395.1027, F.S.; requiring
17 | a hospital or other facility licensed under ch.
18 | 395, F.S., to release patient information to a
19 | regional poison control center under specified
20 | circumstances; amending ss. 627.64171,
21 | 627.66121, and 641.31, F.S.; providing
22 | requirements for the length of hospital stay
23 | relating to a lymph-node dissection which
24 | specified health insurers and health
25 | maintenance organizations must cover; limiting
26 | application; directing the Office of Program
27 | Policy Analysis and Government Accountability
28 | to study mammography and report to the
29 | Legislature; providing an effective date.

30 |
31 | Be It Enacted by the Legislature of the State of Florida:

1 Section 1. The Legislature finds that there exists a
2 compelling state interest in patients being informed of the
3 credentials of the health care practitioners who treat them
4 and in the public being protected from misleading health care
5 advertising. The Legislature further finds that the areas of
6 health care practice licensure can be extremely confusing for
7 patients and that health care practitioners can easily mislead
8 patients into believing that the practitioner is better
9 qualified than other health care practitioners simply by
10 creating a sham practice designation. Therefore, the
11 Legislature has determined that the most direct and effective
12 manner in which to protect patients from this identifiable
13 harm is to ensure that patients and the public be informed of
14 the training of health care practitioners and intends by this
15 act to require the provision of such information.

16 Section 2. Section 456.072, Florida Statutes, is
17 amended to read:

18 456.072 Grounds for discipline; penalties;
19 enforcement.--

20 (1) The following acts shall constitute grounds for
21 which the disciplinary actions specified in subsection (2) may
22 be taken:

23 (a) Making misleading, deceptive, or fraudulent
24 representations in or related to the practice of the
25 licensee's profession.

26 (b) Intentionally violating any rule adopted by the
27 board or the department, as appropriate.

28 (c) Being convicted or found guilty of, or entering a
29 plea of guilty or nolo contendere to, regardless of
30 adjudication, a crime in any jurisdiction which relates to the
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1 | practice of, or the ability to practice, a licensee's
2 | profession.

3 | (d) Using a Class III or a Class IV laser device or
4 | product, as defined by federal regulations, without having
5 | complied with the rules adopted pursuant to s. 501.122(2)
6 | governing the registration of such devices.

7 | (e) Failing to comply with the educational course
8 | requirements for human immunodeficiency virus and acquired
9 | immune deficiency syndrome.

10 | (f) Having a license or the authority to practice any
11 | regulated profession revoked, suspended, or otherwise acted
12 | against, including the denial of licensure, by the licensing
13 | authority of any jurisdiction, including its agencies or
14 | subdivisions, for a violation that would constitute a
15 | violation under Florida law. The licensing authority's
16 | acceptance of a relinquishment of licensure, stipulation,
17 | consent order, or other settlement, offered in response to or
18 | in anticipation of the filing of charges against the license,
19 | shall be construed as action against the license.

20 | (g) Having been found liable in a civil proceeding for
21 | knowingly filing a false report or complaint with the
22 | department against another licensee.

23 | (h) Attempting to obtain, obtaining, or renewing a
24 | license to practice a profession by bribery, by fraudulent
25 | misrepresentation, or through an error of the department or
26 | the board.

27 | (i) Except as provided in s. 465.016, failing to
28 | report to the department any person who the licensee knows is
29 | in violation of this chapter, the chapter regulating the
30 | alleged violator, or the rules of the department or the board.

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1 (j) Aiding, assisting, procuring, employing, or
2 advising any unlicensed person or entity to practice a
3 profession contrary to this chapter, the chapter regulating
4 the profession, or the rules of the department or the board.

5 (k) Failing to perform any statutory or legal
6 obligation placed upon a licensee. For purposes of this
7 section, failing to repay a student loan issued or guaranteed
8 by the state or the Federal Government in accordance with the
9 terms of the loan or failing to comply with service
10 scholarship obligations shall be considered a failure to
11 perform a statutory or legal obligation, and the minimum
12 disciplinary action imposed shall be a suspension of the
13 license until new payment terms are agreed upon or the
14 scholarship obligation is resumed, followed by probation for
15 the duration of the student loan or remaining scholarship
16 obligation period, and a fine equal to 10 percent of the
17 defaulted loan amount. Fines collected shall be deposited into
18 the Medical Quality Assurance Trust Fund.

19 (l) Making or filing a report which the licensee knows
20 to be false, intentionally or negligently failing to file a
21 report or record required by state or federal law, or
22 willfully impeding or obstructing another person to do so.
23 Such reports or records shall include only those that are
24 signed in the capacity of a licensee.

25 (m) Making deceptive, untrue, or fraudulent
26 representations in or related to the practice of a profession
27 or employing a trick or scheme in or related to the practice
28 of a profession.

29 (n) Exercising influence on the patient or client for
30 the purpose of financial gain of the licensee or a third
31 party.

1 (o) Practicing or offering to practice beyond the
2 scope permitted by law or accepting and performing
3 professional responsibilities the licensee knows, or has
4 reason to know, the licensee is not competent to perform.

5 (p) Delegating or contracting for the performance of
6 professional responsibilities by a person when the licensee
7 delegating or contracting for performance of such
8 responsibilities knows, or has reason to know, such person is
9 not qualified by training, experience, and authorization when
10 required to perform them.

11 (q) Violating a lawful order of the department or the
12 board, or failing to comply with a lawfully issued subpoena of
13 the department.

14 (r) Improperly interfering with an investigation or
15 inspection authorized by statute, or with any disciplinary
16 proceeding.

17 (s) Failing to comply with the educational course
18 requirements for domestic violence.

19 (t) In any advertisement for health care services, and
20 during the first in-person patient encounter, failing to
21 disclose the type of license under which the practitioner is
22 operating. This paragraph does not apply to a practitioner
23 while the practitioner is providing services in a facility
24 licensed under chapter 394, chapter 395, or chapter 400.

25 (u)~~(t)~~ Failing to comply with the requirements of ss.
26 381.026 and 381.0261 to provide patients with information
27 about their patient rights and how to file a patient
28 complaint.

29 (v)~~(u)~~ Engaging or attempting to engage in sexual
30 misconduct as defined and prohibited in s. 456.063(1).
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1 ~~(w)~~(v) Failing to comply with the requirements for
2 profiling and credentialing, including, but not limited to,
3 failing to provide initial information, failing to timely
4 provide updated information, or making misleading, untrue,
5 deceptive, or fraudulent representations on a profile,
6 credentialing, or initial or renewal licensure application.

7 ~~(x)~~(w) Failing to report to the board, or the
8 department if there is no board, in writing within 30 days
9 after the licensee has been convicted or found guilty of, or
10 entered a plea of nolo contendere to, regardless of
11 adjudication, a crime in any jurisdiction. Convictions,
12 findings, adjudications, and pleas entered into prior to the
13 enactment of this paragraph must be reported in writing to the
14 board, or department if there is no board, on or before
15 October 1, 1999.

16 ~~(y)~~(x) Using information about people involved in
17 motor vehicle accidents which has been derived from accident
18 reports made by law enforcement officers or persons involved
19 in accidents pursuant to s. 316.066, or using information
20 published in a newspaper or other news publication or through
21 a radio or television broadcast that has used information
22 gained from such reports, for the purposes of commercial or
23 any other solicitation whatsoever of the people involved in
24 such accidents.

25 ~~(z)~~(y) Being unable to practice with reasonable skill
26 and safety to patients by reason of illness or use of alcohol,
27 drugs, narcotics, chemicals, or any other type of material or
28 as a result of any mental or physical condition. In enforcing
29 this paragraph, the department shall have, upon a finding of
30 the secretary or the secretary's designee that probable cause
31 exists to believe that the licensee is unable to practice

1 because of the reasons stated in this paragraph, the authority
2 to issue an order to compel a licensee to submit to a mental
3 or physical examination by physicians designated by the
4 department. If the licensee refuses to comply with such order,
5 the department's order directing such examination may be
6 enforced by filing a petition for enforcement in the circuit
7 court where the licensee resides or does business. The
8 department shall be entitled to the summary procedure provided
9 in s. 51.011. A licensee or certificateholder affected under
10 this paragraph shall at reasonable intervals be afforded an
11 opportunity to demonstrate that he or she can resume the
12 competent practice of his or her profession with reasonable
13 skill and safety to patients.

14 (aa)~~(z)~~ Testing positive for any drug, as defined in
15 s. 112.0455, on any confirmed preemployment or
16 employer-ordered drug screening when the practitioner does not
17 have a lawful prescription and legitimate medical reason for
18 using such drug.

19 (bb)~~(aa)~~ Performing or attempting to perform health
20 care services on the wrong patient, a wrong-site procedure, a
21 wrong procedure, or an unauthorized procedure or a procedure
22 that is medically unnecessary or otherwise unrelated to the
23 patient's diagnosis or medical condition. For the purposes of
24 this paragraph, performing or attempting to perform health
25 care services includes the preparation of the patient.

26 (cc)~~(bb)~~ Leaving a foreign body in a patient, such as
27 a sponge, clamp, forceps, surgical needle, or other
28 paraphernalia commonly used in surgical, examination, or other
29 diagnostic procedures. For the purposes of this paragraph, it
30 shall be legally presumed that retention of a foreign body is
31 not in the best interest of the patient and is not within the

1 standard of care of the profession, regardless of the intent
2 of the professional.

3 ~~(dd)~~(ee) Violating any provision of this chapter, the
4 applicable practice act, or any rules adopted pursuant
5 thereto.

6 ~~(ee)~~(dd) With respect to making a personal injury
7 protection claim as required by s. 627.736, intentionally
8 submitting a claim, statement, or bill that has been "upcoded"
9 as defined in s. 627.732.

10 ~~(ff)~~(ee) With respect to making a personal injury
11 protection claim as required by s. 627.736, intentionally
12 submitting a claim, statement, or bill for payment of services
13 that were not rendered.

14 (2) When the board, or the department when there is no
15 board, finds any person guilty of the grounds set forth in
16 subsection (1) or of any grounds set forth in the applicable
17 practice act, including conduct constituting a substantial
18 violation of subsection (1) or a violation of the applicable
19 practice act which occurred prior to obtaining a license, it
20 may enter an order imposing one or more of the following
21 penalties:

22 (a) Refusal to certify, or to certify with
23 restrictions, an application for a license.

24 (b) Suspension or permanent revocation of a license.

25 (c) Restriction of practice or license, including, but
26 not limited to, restricting the licensee from practicing in
27 certain settings, restricting the licensee to work only under
28 designated conditions or in certain settings, restricting the
29 licensee from performing or providing designated clinical and
30 administrative services, restricting the licensee from
31 practicing more than a designated number of hours, or any

1 other restriction found to be necessary for the protection of
2 the public health, safety, and welfare.

3 (d) Imposition of an administrative fine not to exceed
4 \$10,000 for each count or separate offense. If the violation
5 is for fraud or making a false or fraudulent representation,
6 the board, or the department if there is no board, must impose
7 a fine of \$10,000 per count or offense.

8 (e) Issuance of a reprimand or letter of concern.

9 (f) Placement of the licensee on probation for a
10 period of time and subject to such conditions as the board, or
11 the department when there is no board, may specify. Those
12 conditions may include, but are not limited to, requiring the
13 licensee to undergo treatment, attend continuing education
14 courses, submit to be reexamined, work under the supervision
15 of another licensee, or satisfy any terms which are reasonably
16 tailored to the violations found.

17 (g) Corrective action.

18 (h) Imposition of an administrative fine in accordance
19 with s. 381.0261 for violations regarding patient rights.

20 (i) Refund of fees billed and collected from the
21 patient or a third party on behalf of the patient.

22 (j) Requirement that the practitioner undergo remedial
23 education.

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25 In determining what action is appropriate, the board, or
26 department when there is no board, must first consider what
27 sanctions are necessary to protect the public or to compensate
28 the patient. Only after those sanctions have been imposed may
29 the disciplining authority consider and include in the order
30 requirements designed to rehabilitate the practitioner. All
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1 costs associated with compliance with orders issued under this
2 subsection are the obligation of the practitioner.

3 (3)(a) Notwithstanding subsection (2), if the ground
4 for disciplinary action is the first-time failure of the
5 licensee to satisfy continuing education requirements
6 established by the board, or by the department if there is no
7 board, the board or department, as applicable, shall issue a
8 citation in accordance with s. 456.077 and assess a fine, as
9 determined by the board or department by rule. In addition,
10 for each hour of continuing education not completed or
11 completed late, the board or department, as applicable, may
12 require the licensee to take 1 additional hour of continuing
13 education for each hour not completed or completed late.

14 (b) Notwithstanding subsection (2), if the ground for
15 disciplinary action is the first-time violation of a practice
16 act for unprofessional conduct, as used in ss. 464.018(1)(h),
17 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
18 harm to the patient occurred, the board or department, as
19 applicable, shall issue a citation in accordance with s.
20 456.077 and assess a penalty as determined by rule of the
21 board or department.

22 (4) In addition to any other discipline imposed
23 through final order, or citation, entered on or after July 1,
24 2001, pursuant to this section or discipline imposed through
25 final order, or citation, entered on or after July 1, 2001,
26 for a violation of any practice act, the board, or the
27 department when there is no board, shall assess costs related
28 to the investigation and prosecution of the case. Such costs
29 related to the investigation and prosecution include, but are
30 not limited to, salaries and benefits of personnel, costs
31 related to the time spent by the attorney and other personnel

1 working on the case, and any other expenses incurred by the
2 department for the case. The board, or the department when
3 there is no board, shall determine the amount of costs to be
4 assessed after its consideration of an affidavit of itemized
5 costs and any written objections thereto. In any case where
6 the board or the department imposes a fine or assessment and
7 the fine or assessment is not paid within a reasonable time,
8 such reasonable time to be prescribed in the rules of the
9 board, or the department when there is no board, or in the
10 order assessing such fines or costs, the department or the
11 Department of Legal Affairs may contract for the collection
12 of, or bring a civil action to recover, the fine or
13 assessment.

14 (5) In addition to, or in lieu of, any other remedy or
15 criminal prosecution, the department may file a proceeding in
16 the name of the state seeking issuance of an injunction or a
17 writ of mandamus against any person who violates any of the
18 provisions of this chapter, or any provision of law with
19 respect to professions regulated by the department, or any
20 board therein, or the rules adopted pursuant thereto.

21 (6) In the event the board, or the department when
22 there is no board, determines that revocation of a license is
23 the appropriate penalty, the revocation shall be permanent.
24 However, the board may establish by rule requirements for
25 reapplication by applicants whose licenses have been
26 permanently revoked. Such requirements may include, but shall
27 not be limited to, satisfying current requirements for an
28 initial license.

29 (7) The purpose of this section is to facilitate
30 uniform discipline for those actions made punishable under
31 this section and, to this end, a reference to this section

1 constitutes a general reference under the doctrine of
2 incorporation by reference.

3 Section 3. Subsection (9) of section 409.907, Florida
4 Statutes, is amended, and subsection (12) is added to that
5 section, to read:

6 409.907 Medicaid provider agreements.--The agency may
7 make payments for medical assistance and related services
8 rendered to Medicaid recipients only to an individual or
9 entity who has a provider agreement in effect with the agency,
10 who is performing services or supplying goods in accordance
11 with federal, state, and local law, and who agrees that no
12 person shall, on the grounds of handicap, race, color, or
13 national origin, or for any other reason, be subjected to
14 discrimination under any program or activity for which the
15 provider receives payment from the agency.

16 (9) Upon receipt of a completed, signed, and dated
17 application, and completion of any necessary background
18 investigation and criminal history record check, the agency
19 must either:

20 (a) Enroll the applicant as a Medicaid provider no
21 earlier than the effective date of the approval of the
22 provider application. With respect to providers who were
23 recently granted a change of ownership and those who primarily
24 provide emergency medical services transportation or emergency
25 services and care pursuant to s. 395.1041 or s. 401.45, or
26 services provided by entities under s. 409.91255, and
27 out-of-state providers, upon approval of the provider
28 application, the effective date of approval is considered to
29 be the date the agency receives the provider application; or

30 (b) Deny the application if the agency finds that it
31 is in the best interest of the Medicaid program to do so. The

1 agency may consider the factors listed in subsection (10), as
2 well as any other factor that could affect the effective and
3 efficient administration of the program, including, but not
4 limited to, the applicant's demonstrated ability to provide
5 services, conduct business, and operate a financially viable
6 concern; the current availability of medical care, services,
7 or supplies to recipients, taking into account geographic
8 location and reasonable travel time; the number of providers
9 of the same type already enrolled in the same geographic area;
10 and the credentials, experience, success, and patient outcomes
11 of the provider for the services that it is making application
12 to provide in the Medicaid program. The agency shall deny the
13 application if the agency finds that a provider; any officer,
14 director, agent, managing employee, or affiliated person; or
15 any partner or shareholder having an ownership interest equal
16 to 5 percent or greater in the provider if the provider is a
17 corporation, partnership, or other business entity, has failed
18 to pay all outstanding fines or overpayments assessed by final
19 order of the agency or final order of the Centers for Medicare
20 and Medicaid Services, not subject to further appeal, unless
21 the provider agrees to a repayment plan that includes
22 withholding Medicaid reimbursement until the amount due is
23 paid in full.

24 (12) The Agency for Health Care Administration shall
25 develop a uniform application process for approving providers
26 of medical assistance and related services rendered to
27 Medicaid recipients through the state's Medicaid waiver
28 programs. The process developed must eliminate the necessity
29 for Medicaid waiver providers to submit separate applications
30 to provide the same product or service for more than one
31 Medicaid waiver program. A Medicaid waiver provider

1 application that is approved by the agency may be considered
2 if that applicant also applies to become an approved provider
3 for an additional waiver program, if the product or service is
4 an allowable expense under that program.

5 Section 4. Section 468.352, Florida Statutes, is
6 amended to read:

7 (Substantial rewording of section. See
8 s. 468.352, F.S., for present text.)

9 468.352 Definitions.--As used in this part, the term:

10 (1) "Board" means the Board of Respiratory Care.

11 (2) "Certified respiratory therapist" means any person
12 licensed pursuant to this part who is certified by the
13 National Board for Respiratory Care or its successor; who is
14 employed to deliver respiratory care services, under the order
15 of a physician licensed pursuant to chapter 458 or chapter
16 459, in accordance with protocols established by a hospital or
17 other health care provider or the board; and who functions in
18 situations of unsupervised patient contact requiring
19 individual judgment.

20 (3) "Critical care" means care given to a patient in
21 any setting involving a life-threatening emergency.

22 (4) "Department" means the Department of Health.

23 (5) "Direct supervision" means practicing under the
24 direction of a licensed, registered, or certified respiratory
25 therapist who is physically on the premises and readily
26 available, as defined by the board.

27 (6) "Physician supervision" means supervision and
28 control by a physician licensed under chapter 458 or chapter
29 459 who assumes the legal liability for the services rendered
30 by the personnel employed in his or her office. Except in the
31 case of an emergency, physician supervision requires the easy

1 availability of the physician within the office or the
2 physical presence of the physician for consultation and
3 direction of the actions of the persons who deliver
4 respiratory care services.

5 (7) "Practice of respiratory care" or "respiratory
6 therapy" means the allied health specialty associated with the
7 cardiopulmonary system that is practiced under the orders of a
8 physician licensed under chapter 458 or chapter 459 and in
9 accordance with protocols, policies, and procedures
10 established by a hospital or other health care provider or the
11 board, including the assessment, diagnostic evaluation,
12 treatment, management, control, rehabilitation, education, and
13 care of patients in all care settings.

14 (8) "Registered respiratory therapist" means any
15 person licensed under this part who is registered by the
16 National Board for Respiratory Care or its successor, and who
17 is employed to deliver respiratory care services under the
18 order of a physician licensed under chapter 458 or chapter
19 459, in accordance with protocols established by a hospital or
20 other health care provider or the board, and who functions in
21 situations of unsupervised patient contact requiring
22 individual judgment.

23 (9) "Respiratory care practitioner" means any person
24 licensed under this part who is employed to deliver
25 respiratory care services, under direct supervision, pursuant
26 to the order of a physician licensed under chapter 458 or
27 chapter 459.

28 (10) "Respiratory care services" includes:

29 (a) Evaluation and disease management.

30 (b) Diagnostic and therapeutic use of respiratory
31 equipment, devices, or medical gas.

1 (c) Administration of drugs, as duly ordered or
2 prescribed by a physician licensed under chapter 458 or
3 chapter 459 and in accordance with protocols, policies, and
4 procedures established by a hospital or other health care
5 provider or the board.

6 (d) Initiation, management, and maintenance of
7 equipment to assist and support ventilation and respiration.

8 (e) Diagnostic procedures, research, and therapeutic
9 treatment and procedures, including measurement of ventilatory
10 volumes, pressures, and flows; specimen collection and
11 analysis of blood for gas transport and acid/base
12 determinations; pulmonary-function testing; and other related
13 physiological monitoring of cardiopulmonary systems.

14 (f) Cardiopulmonary rehabilitation.

15 (g) Cardiopulmonary resuscitation, advanced cardiac
16 life support, neonatal resuscitation, and pediatric advanced
17 life support, or equivalent functions.

18 (h) Insertion and maintenance of artificial airways
19 and intravascular catheters.

20 (i) Education of patients, families, the public, or
21 other health care providers, including disease process and
22 management programs and smoking prevention and cessation
23 programs.

24 (j) Initiation and management of hyperbaric oxygen.

25 Section 5. Section 468.355, Florida Statutes, is
26 amended to read:

27 (Substantial rewording of section. See
28 s. 468.355, F.S., for present text.)

29 468.355 Licensure requirements.--To be eligible for
30 licensure by the board, an applicant must be an active
31 "Certified Respiratory Therapist" or an active "Registered

1 Respiratory Therapist" as designated by the National Board for
2 Respiratory Care, or its successor.

3 Section 6. Section 468.368, Florida Statutes, is
4 amended to read:

5 (Substantial rewording of section. See
6 s. 468.368, F.S., for present text.)

7 468.368 Exemptions.--This part may not be construed to
8 prevent or restrict the practice, service, or activities of:

9 (1) Any person licensed in this state by any other law
10 from engaging in the profession or occupation for which he or
11 she is licensed.

12 (2) Any legally qualified person in the state or
13 another state or territory who is employed by the United
14 States Government or any agency thereof while such person is
15 discharging his or her official duties.

16 (3) A friend or family member who is providing
17 respiratory care services to an ill person and who does not
18 represent himself or herself to be a respiratory care
19 practitioner or respiratory therapist.

20 (4) An individual providing respiratory care services
21 in an emergency who does not represent himself or herself as a
22 respiratory care practitioner or respiratory therapist.

23 (5) Any individual employed to deliver, assemble, set
24 up, or test equipment for use in a home, upon the order of a
25 physician licensed pursuant to chapter 458 or chapter 459.
26 This subsection does not, however, authorize the practice of
27 respiratory care without a license.

28 (6) Any individual certified or registered as a
29 pulmonary function technologist who is credentialed by the
30 National Board for Respiratory Care for performing
31 cardiopulmonary diagnostic studies.

1 (7) Any student who is enrolled in an accredited
 2 respiratory care program approved by the board, while
 3 performing respiratory care as an integral part of a required
 4 course.

5 (8) The delivery of incidental respiratory care to
 6 noninstitutionalized persons by surrogate family members who
 7 do not represent themselves as registered or certified
 8 respiratory care therapists.

9 (9) Any individual credentialed by the Underseas
 10 Hyperbaric Society in hyperbaric medicine or its equivalent as
 11 determined by the board, while performing related duties. This
 12 subsection does not, however, authorize the practice of
 13 respiratory care without a license.

14 Section 7. Effective January 1, 2005, sections 468.356
 15 and 468.357, Florida Statutes, are repealed.

16 Section 8. Subsections (3) and (4) of section
 17 400.9905, Florida Statutes, are amended, and subsections (5)
 18 and (6) are added to that section, to read: (attached)

19 400.9905 Definitions.--

20 (3) "Clinic" means an entity at which health care
 21 services are provided to individuals and which tenders charges
 22 for reimbursement for such services, including a mobile clinic
 23 and a portable equipment provider. For purposes of this part,
 24 the term does not include and the licensure requirements of
 25 this part do not apply to:

26 (a) Entities licensed or registered by the state under
 27 chapter 395; or entities licensed or registered by the state
 28 and providing only health care services within the scope of
 29 services authorized under their respective licenses granted
 30 under ss. 383.30-383.335, chapter 390, chapter 394, ~~chapter~~
 31 ~~395~~, chapter 397, this chapter except part XIII, chapter 463,

1 chapter 465, chapter 466, chapter 478, part I of chapter 483
2 ~~480~~, chapter 484, or chapter 651, end-stage renal disease
3 providers authorized under 42 C.F.R. part 405, subpart U, or
4 providers certified under 42 C.F.R. part 485, subpart B or
5 subpart H, or any entity that provides neonatal or pediatric
6 hospital-based healthcare services by licensed practitioners
7 solely within a hospital licensed under chapter 395.

8 (b) Entities that own, directly or indirectly,
9 entities licensed or registered by the state pursuant to
10 chapter 395; or entities that own, directly or indirectly,
11 entities licensed or registered by the state and providing
12 only health care services within the scope of services
13 authorized pursuant to their respective licenses granted under
14 ss. 383.30-383.335, chapter 390, chapter 394, ~~chapter 395,~~
15 chapter 397, this chapter except part XIII, chapter 463,
16 chapter 465, chapter 466, chapter 478, part I of chapter 483
17 ~~480~~, chapter 484, or chapter 651, end-stage renal disease
18 providers authorized under 42 C.F.R. part 405, subpart U, or
19 providers certified under 42 C.F.R. part 485, subpart B or
20 subpart H, or any entity that provides neonatal or pediatric
21 hospital-based healthcare services by licensed practitioners
22 solely within a hospital licensed under chapter 395.

23 (c) Entities that are owned, directly or indirectly,
24 by an entity licensed or registered by the state pursuant to
25 chapter 395; or entities that are owned, directly or
26 indirectly, by an entity licensed or registered by the state
27 and providing only health care services within the scope of
28 services authorized pursuant to their respective licenses
29 granted under ss. 383.30-383.335, chapter 390, chapter 394,
30 ~~chapter 395,~~ chapter 397, this chapter except part XIII,
31 chapter 463, chapter 465, chapter 466, chapter 478, part I of

1 chapter ~~483 480~~, chapter 484, or chapter 651, end-stage renal
2 disease providers authorized under 42 C.F.R. part 405, subpart
3 U, or providers certified under 42 C.F.R. part 485, subpart B
4 or subpart H, or any entity that provides neonatal or
5 pediatric hospital-based healthcare services by licensed
6 practitioners solely within a hospital licensed under chapter
7 395.

8 (d) Entities that are under common ownership, directly
9 or indirectly, with an entity licensed or registered by the
10 state pursuant to chapter 395; or entities that are under
11 common ownership, directly or indirectly, with an entity
12 licensed or registered by the state and providing only health
13 care services within the scope of services authorized pursuant
14 to its respective license granted under ss. 383.30-383.335,
15 chapter 390, chapter 394, ~~chapter 395~~, chapter 397, this
16 chapter except part XIII, chapter 463, chapter 465, chapter
17 466, chapter 478, part I of chapter ~~483 480~~, chapter 484, or
18 chapter 651, end-stage renal disease providers authorized
19 under 42 C.F.R. part 405, subpart U, or providers certified
20 under 42 C.F.R. part 485, subpart B or subpart H, or any
21 entity that provides neonatal or pediatric hospital-based
22 services by licensed practitioners solely within a hospital
23 licensed under chapter 395.

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

29 (f) A sole proprietorship, group practice,
30 partnership, or corporation that provides health care services
31 by physicians covered by s. 627.419, that is directly

1 supervised by one or more of such physicians, and that is
 2 wholly owned by one or more of those physicians or by a
 3 physician and the spouse, parent, child, or sibling of that
 4 physician.

5 ~~(g)(f)~~ A sole proprietorship, group practice,
 6 partnership, or corporation that provides health care services
 7 by licensed health care practitioners under chapter 457,
 8 chapter 458, chapter 459, chapter 460, chapter 461, chapter
 9 462, chapter 463, chapter 466, chapter 467, chapter 480,
 10 chapter 484, chapter 486, chapter 490, chapter 491, or part I,
 11 part III, part X, part XIII, or part XIV of chapter 468, or s.
 12 464.012, which are wholly owned by one or more ~~a~~ licensed
 13 health care ~~practitioners~~ practitioner, or the licensed health
 14 care ~~practitioners set forth in this paragraph~~ practitioner
 15 and the spouse, parent, ~~or~~ child, or sibling of a licensed
 16 health care practitioner, so long as one of the owners who is
 17 a licensed health care practitioner is supervising the
 18 services performed therein and is legally responsible for the
 19 entity's compliance with all federal and state laws. However,
 20 a health care practitioner may not supervise services beyond
 21 the scope of the practitioner's license, except that, for the
 22 purposes of this part, a clinic owned by a licensee in s.
 23 456.053(3)(b) that provides only services authorized pursuant
 24 to s. 456.053(3)(b) may be supervised by a licensee specified
 25 in s. 456.053(3)(b).

26 ~~(h)(g)~~ Clinical facilities affiliated with an
 27 accredited medical school at which training is provided for
 28 medical students, residents, or fellows.

29 (i) Entities that provide only oncology or radiation
 30 therapy services by physicians licensed under chapter 458 or
 31 459.

1 (4) "Medical director" means a physician who is
2 employed or under contract with a clinic and who maintains a
3 full and unencumbered physician license in accordance with
4 chapter 458, chapter 459, chapter 460, or chapter 461.
5 However, if the clinic does not provide services pursuant to
6 the respective physician practice acts listed in this
7 subsection, it is limited to providing health care services
8 pursuant to chapter 457, chapter 484, chapter 486, chapter
9 490, or chapter 491 or part I, part III, part X, part XIII, or
10 part XIV of chapter 468, the clinic may appoint a
11 Florida-licensed health care practitioner who does not provide
12 services pursuant to the respective physician practice acts
13 listed in this subsection licensed under that chapter to serve
14 as a clinic director who is responsible for the clinic's
15 activities. A health care practitioner may not serve as the
16 clinic director if the services provided at the clinic are
17 beyond the scope of that practitioner's license, except that a
18 licensee specified in s. 456.053(3)(b) that provides only
19 services authorized pursuant to s. 456.053(3)(b) may serve as
20 clinic director of an entity providing services as specified
21 in s. 456.053(3)(b).

22 (5) "Mobile clinic" means a movable or detached
23 self-contained health care unit within or from which direct
24 health care services are provided to individuals and that
25 otherwise meets the definition of a clinic in subsection (3).

26 (6) "Portable equipment provider" means an entity that
27 contracts with or employs persons to provide portable
28 equipment to multiple locations performing treatment or
29 diagnostic testing of individuals, that bills third-party
30 payors for those services, and that otherwise meets the
31 definition of a clinic in subsection (3).

1 (7) "Chief financial officer" means an individual who
 2 has at least a minimum of a bachelor's degree from an
 3 accredited university in accounting, finance, or a related
 4 field and is the person responsible for the preparation of the
 5 clinic billing.

6 Section 9. The creation of paragraph 400.9905(3)(i),
 7 Florida Statutes, by this act is intended to clarify the
 8 legislative intent of this provision as it existed at the time
 9 the provision initially took effect as section 456.0375(1)(b),
 10 Florida Statutes, and paragraph 400.9905(3)(i), Florida
 11 Statutes, as created by this act, shall operate retroactively
 12 to October 1, 2001. Nothing herein shall be construed as
 13 amending, modifying, limiting, or otherwise affecting in any
 14 way the legislative intent, scope, terms, prohibition, or
 15 requirements of section 456.053, Florida Statutes.

16 Section 10. Subsections (1), (2), and (3) and
 17 paragraphs (a) and (b) of subsection (7) of section 400.991,
 18 Florida Statutes, are amended to read:

19 400.991 License requirements; background screenings;
 20 prohibitions.--

21 (1)(a) Each clinic, as defined in s. 400.9905, must be
 22 licensed and shall at all times maintain a valid license with
 23 the agency. Each clinic location shall be licensed separately
 24 regardless of whether the clinic is operated under the same
 25 business name or management as another clinic.

26 (b) Each mobile clinic must obtain a separate health
 27 care clinic license and ~~clinics~~ must provide to the agency, at
 28 least quarterly, ~~its their~~ projected street location ~~locations~~
 29 to enable the agency to locate and inspect such clinic
 30 ~~clinics~~. A portable equipment provider must obtain a health

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1 care clinic license for a single administrative office and is
2 not required to submit quarterly projected street locations.

3 (2) The initial clinic license application shall be
4 filed with the agency by all clinics, as defined in s.
5 400.9905, on or before July ~~March~~ 1, 2004. A clinic license
6 must be renewed biennially.

7 (3) Applicants that submit an application on or before
8 July ~~March~~ 1, 2004, which meets all requirements for initial
9 licensure as specified in this section shall receive a
10 temporary license until the completion of an initial
11 inspection verifying that the applicant meets all requirements
12 in rules authorized by s. 400.9925. However, a clinic engaged
13 in magnetic resonance imaging services may not receive a
14 temporary license unless it presents evidence satisfactory to
15 the agency that such clinic is making a good faith effort and
16 substantial progress in seeking accreditation required under
17 s. 400.9935.

18 (7) Each applicant for licensure shall comply with the
19 following requirements:

20 (a) As used in this subsection, the term "applicant"
21 means individuals owning or controlling, directly or
22 indirectly, 5 percent or more of an interest in a clinic; the
23 medical or clinic director, or a similarly titled person who
24 is responsible for the day-to-day operation of the licensed
25 clinic; the financial officer or similarly titled individual
26 who is responsible for the financial operation of the clinic;
27 and licensed health care practitioners ~~medical providers~~ at
28 the clinic.

29 (b) Upon receipt of a completed, signed, and dated
30 application, the agency shall require background screening of
31 the applicant, in accordance with the level 2 standards for

1 screening set forth in chapter 435. Proof of compliance with
2 the level 2 background screening requirements of chapter 435
3 which has been submitted within the previous 5 years in
4 compliance with any other health care licensure requirements
5 of this state is acceptable in fulfillment of this paragraph.
6 Applicants who own less than 10 percent of a health care
7 clinic are not required to submit fingerprints under this
8 section.

9 Section 11. Subsections (9) and (11) of section
10 400.9935, Florida Statutes, are amended to read:

11 400.9935 Clinic responsibilities.--

12 (9) Any person or entity providing health care
13 services which is not a clinic, as defined under s. 400.9905,
14 may voluntarily apply for a certificate of exemption from
15 licensure under its exempt status with the agency on a form
16 that sets forth its name or names and addresses, a statement
17 of the reasons why it cannot be defined as a clinic, and other
18 information deemed necessary by the agency. An exemption is
19 not transferable. The agency may charge an applicant for a
20 certificate of exemption \$100 or the actual cost, whichever is
21 less, for processing the certificate.

22 (11)(a) Each clinic engaged in magnetic resonance
23 imaging services must be accredited by the Joint Commission on
24 Accreditation of Healthcare Organizations, the American
25 College of Radiology, or the Accreditation Association for
26 Ambulatory Health Care, within 1 year after licensure.
27 However, a clinic may request a single, 6-month extension if
28 it provides evidence to the agency establishing that, for good
29 cause shown, such clinic can not be accredited within 1 year
30 after licensure, and that such accreditation will be completed
31 within the 6-month extension. After obtaining accreditation as

1 required by this subsection, each such clinic must maintain
2 accreditation as a condition of renewal of its license.

3 (b) The agency may deny ~~disallow~~ the application or
4 revoke the license of any entity formed for the purpose of
5 avoiding compliance with the accreditation provisions of this
6 subsection and whose principals were previously principals of
7 an entity that was unable to meet the accreditation
8 requirements within the specified timeframes. The agency may
9 adopt rules as to the accreditation of magnetic resonance
10 imaging clinics.

11 Section 12. Subsections (1) and (3) of section
12 400.995, Florida Statutes, are amended, and subsection (10) is
13 added to said section, to read:

14 400.995 Agency administrative penalties.--

15 (1) The agency may deny the application for a license
16 renewal, revoke or suspend the license, and impose
17 administrative fin ~~penalties against clinics~~ of up to \$5,000
18 per violation for violations of the requirements of this part
19 or rules of the agency. In determining if a penalty is to be
20 imposed and in fixing the amount of the fine, the agency shall
21 consider the following factors:

22 (a) The gravity of the violation, including the
23 probability that death or serious physical or emotional harm
24 to a patient will result or has resulted, the severity of the
25 action or potential harm, and the extent to which the
26 provisions of the applicable laws or rules were violated.

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

29 (c) Any previous violations.

30 (d) The financial benefit to the clinic of committing
31 or continuing the violation.

1 (3) Any action taken to correct a violation shall be
2 documented in writing by the owner, medical director, or
3 clinic director of the clinic and verified through followup
4 visits by agency personnel. The agency may impose a fine and,
5 in the case of an owner-operated clinic, revoke or deny a
6 clinic's license when a clinic medical director or clinic
7 director ~~knowingly fraudulently~~ misrepresents actions taken to
8 correct a violation.

9 (10) If the agency issues a notice of intent to deny a
10 license application after a temporary license has been issued
11 pursuant to s. 400.991(3), the temporary license shall expire
12 on the date of the notice and may not be extended during any
13 proceeding for administrative or judicial review pursuant to
14 chapter 120.

15 Section 13. The agency shall refund 90 percent of the
16 license application fee to applicants that submitted their
17 health care clinic licensure fees and applications but were
18 subsequently exempted from licensure by this act.

19 Section 14. Any person or entity defined as a clinic
20 under s. 400.9905, Florida Statutes, shall not be in violation
21 of part XIII of chapter 400, Florida Statutes, due to failure
22 to apply for a clinic license by March 1, 2004, as previously
23 required by s. 400.991, Florida Statutes. Payment to any such
24 person or entity by an insurer or other person liable for
25 payment to such person or entity may not be denied on the
26 grounds that the person or entity failed to apply for or
27 obtain a clinic license before March 1, 2004.

28 Section 15. Subsections (1), (9), and (11) of section
29 400.9935, Florida Statutes, are amended to read:

30 400.9935 Clinic responsibilities.--

31

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

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

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

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

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

16 (e) Serve as the clinic records owner as defined in s.
17 456.057.

18 (f) Ensure compliance with the recordkeeping, office
19 surgery, and adverse incident reporting requirements of
20 chapter 456, the respective practice acts, and rules adopted
21 under this part.

22 (g) Conduct systematic reviews of clinic billings to
23 ensure that the billings are not fraudulent or unlawful. Upon
24 discovery of an unlawful charge, the medical director or
25 clinic director shall take immediate corrective action. If the
26 clinic performs only the technical component of magnetic
27 resonance imaging, static radiographs, computed tomography, or
28 positron emission tomography, and provides the professional
29 interpretation of such services, in a fixed facility that is
30 accredited by the Joint Commission on Accreditation of
31 Healthcare Organizations or the Accreditation Association for

1 Ambulatory Health Care, and the American College of Radiology;
2 and if, in the preceding quarter, the percentage of scans
3 performed by that clinic which was billed to all personal
4 injury protection insurance carriers was less than 15 percent,
5 the chief financial officer of the clinic may, in a written
6 acknowledgement provided to the agency, assume the
7 responsibility for the conduct of the systematic reviews of
8 clinic billings to ensure that the billings are not fraudulent
9 or unlawful.

10 Section 16. Present subsections (3) and (4) of section
11 395.1027, Florida Statutes, are redesignated as subsections
12 (4) and (5), respectively, and a new subsection (3) is added
13 to that section, to read:

14 395.1027 Regional poison control centers.--

15 (3) Upon request, a licensed facility shall release to
16 a regional poison control center any patient information that
17 is necessary for case management of poison cases.

18 Section 17. Subsections (1) and (2) and paragraph (a)
19 of subsection (4) of section 627.64171, Florida Statutes, are
20 amended to read:

21 627.64171 Coverage for length of stay and outpatient
22 postsurgical care.--

23 (1) Any health insurance policy that is issued,
24 amended, delivered, or renewed in this state which provides
25 coverage for breast cancer treatment may not limit inpatient
26 hospital coverage for lymph-node dissections or mastectomies
27 to any period that is less than that determined by the
28 treating physician to be medically necessary in accordance
29 with prevailing medical standards and after consultation with
30 the insured patient.

31

1 (2) Any health insurance policy that provides coverage
2 for mastectomies under subsection (1) must also provide
3 coverage for outpatient postsurgical followup care in keeping
4 with prevailing medical standards by a licensed health care
5 professional qualified to provide postsurgical mastectomy
6 care. The treating physician, after consultation with the
7 insured patient, may choose that the outpatient care be
8 provided at the most medically appropriate setting, which may
9 include the hospital, treating physician's office, outpatient
10 center, or home of the insured patient.

11 (4)(a) This section does not require an insured
12 patient to have a lymph-node dissection or a ~~the~~ mastectomy in
13 the hospital or stay in the hospital for a fixed period of
14 time following a lymph-node dissection or a ~~the~~ mastectomy.

15 Section 18. Subsections (1) and (2) and paragraph (a)
16 of subsection (4) of section 627.66121, Florida Statutes, are
17 amended to read:

18 627.66121 Coverage for length of stay and outpatient
19 postsurgical care.--

20 (1) Any group, blanket, or franchise accident or
21 health insurance policy that is issued, amended, delivered, or
22 renewed in this state which provides coverage for breast
23 cancer treatment may not limit inpatient hospital coverage for
24 lymph-node dissections or mastectomies to any period that is
25 less than that determined by the treating physician to be
26 medically necessary in accordance with prevailing medical
27 standards and after consultation with the insured patient.

28 (2) Any group, blanket, or franchise accident or
29 health insurance policy that provides coverage for
30 mastectomies under subsection (1) must also provide coverage
31 for outpatient postsurgical followup care in keeping with

1 prevailing medical standards by a licensed health care
2 professional qualified to provide postsurgical mastectomy
3 care. The treating physician, after consultation with the
4 insured patient, may choose that the outpatient care be
5 provided at the most medically appropriate setting, which may
6 include the hospital, treating physician's office, outpatient
7 center, or home of the insured patient.

8 (4)(a) This section does not require an insured
9 patient to have a lymph-node dissection or a ~~the~~ mastectomy in
10 the hospital or stay in the hospital for a fixed period of
11 time following a lymph-node dissection or a ~~the~~ mastectomy.

12 Section 19. Paragraphs (a) and (c) of subsection (31)
13 of section 641.31, Florida Statutes, are amended to read:

14 641.31 Health maintenance contracts.--

15 (31)(a) Health maintenance contracts that provide
16 coverage, benefits, or services for breast cancer treatment
17 may not limit inpatient hospital coverage for lymph-node
18 dissections or mastectomies to any period that is less than
19 that determined by the treating physician under contract with
20 the health maintenance organization to be medically necessary
21 in accordance with prevailing medical standards and after
22 consultation with the covered patient. Such contract must also
23 provide coverage for outpatient postsurgical followup care in
24 keeping with prevailing medical standards by a licensed health
25 care professional under contract with the health maintenance
26 organization qualified to provide postsurgical mastectomy
27 care. The treating physician under contract with the health
28 maintenance organization, after consultation with the covered
29 patient, may choose that the outpatient care be provided at
30 the most medically appropriate setting, which may include the
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1 hospital, treating physician's office, outpatient center, or
2 home of the covered patient.

3 (c)1. This subsection does not require a covered
4 patient to have a lymph-node dissection or a ~~the~~ mastectomy in
5 the hospital or stay in the hospital for a fixed period of
6 time following a lymph-node dissection or a ~~the~~ mastectomy.

7 2. This subsection does not prevent a contract from
8 imposing deductibles, coinsurance, or other cost sharing in
9 relation to benefits pursuant to this subsection, except that
10 such cost sharing shall not exceed cost sharing with other
11 benefits.

12 Section 20. This act shall take effect July 1, 2004.

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