

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.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/SB 2112

INTRODUCER: Criminal Justice Committee and Banking and Insurance Committee

SUBJECT: Health Care Clinics

DATE: April 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Bedford</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/3 amendments</u>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
4.	_____	_____	<u>HA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill addresses licensure requirements and regulatory provisions and enforcement provisions pertinent to health care clinics and specialty care clinics.

Health Care Clinics:

The bill redefines the criteria under which certain health care providers and practitioners are held to be exempt from licensure under the Health Care Clinic Act (ss. 440.990-440.995, F.S.). For the exemption to apply, the health care services provided could not exceed the scope of the licensed owner's health care license. This requirement would not apply to practices or entities owned by medical physicians, osteopathic physicians, chiropractic physicians, dentists, podiatric physicians, or licensed physician assistants. The bill also exempts from licensure facilities that are wholly owned by a publicly traded corporation.

The bill requires that the medical or clinic director of a clinic ensure that all health care practitioners at the clinic provide health care services in accordance with their license or as required by law. Additionally, the clinic or medical director is limited to being the medical or clinic director of a maximum of five clinics with a cumulative total of no more than 200 employees and persons under contract at a given time. All persons providing health care services to individuals in a clinic are required to provide care as required by statute or indicated in law as a condition of clinic licensure.

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

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

Applicants for clinic licensure must provide the AHCA with the serial or operating numbers of each magnetic resonance imaging (MRI), static radiograph (static X-ray), computed tomography, or positron emission tomography machine used by the clinic if the clinic performs the technical component (the scan itself) and provides the professional component (interpreting the scan) of such services itself or uses an independent contractor to provide the professional component. The bill requires a clinic to display a sign stating that the Department of Financial Services (DFS) may pay a reward of up to \$25,000 for information leading to a conviction for insurance fraud. It permits the Division of Insurance Fraud (DIF) to inspect clinics and have complete access to clinic premises to ensure compliance.

The bill places a 2-year expiration date on each certificate of exemption. The bill authorizes the AHCA to investigate any applicant claiming an exemption for purposes of compliance, and provides it with access to the premises of a certificate holder or applicant and all billings and records indicated in s. 400.9915(2), F.S., and in agency rules. A health care provider that self determines or claims a certificate of exemption but does not meet the exemption claimed is subject to the provisions applicable to the unlicensed operation of a health care clinic.

Specialty Care Clinics

The bill provides for a legislative finding regarding additional regulation of specialty health care clinics. It defines the terms “specialty clinic,” “infusion therapy,” and “fraud.”

The bill requires that each specialty clinic be licensed and maintain a valid license with the AHCA, that the clinic location be licensed separately regardless of whether the clinic is operated under the same business name or management as another clinic, and that the clinic obtain a separate health care clinic license and provide to the AHCA, at least quarterly, its projected street location. A specialty clinic operating without a specialty clinic license at the time of the effective date of the bill must be given a reasonable time to obtain this license. The bill requires biannual renewal of a specialty clinic license.

An application for a specialty clinic license or for renewal of an existing license must be notarized on forms furnished by the AHCA and must be accompanied by a specified license fee. The bill also specifies information that must be included in the application in addition to information currently required under the Health Care Clinic Act.

The requirements for an applicant for clinic licensure, including the background screening of the applicant, pertain to an individual owning or controlling, directly or indirectly, any interest in a specialty clinic.

The AHCA must deny or revoke a specialty clinic license if an applicant has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, a specified

offense, or when any business entity or individual possessing an ownership or pecuniary interest in the specialty clinic also possessed an ownership or pecuniary interest, individually or through any business entity, in any health care facility whose license was revoked in any jurisdiction during the pendency of that interest. The AHCA may not issue a specialty clinic license to any applicant to whom the agency has sent notice that there is a pending question as to whether one or more of the individuals with an ownership of 5 percent or more or with a pecuniary interest of \$5,000 or more in the clinic has a disqualifying criminal record. The AHCA must deny a specialty clinic license application when the applicant has failed to resolve a criminal background screening issue.

Specialty clinics will be subject to requirements applicable to health care clinics regarding AHCA inspections as part of the initial license application or renewal application and unannounced AHCA inspections to determine compliance with licensure laws and rules. Not allowing the AHCA access to the clinic premises and billing or other specified records as part of an inspection or the clinic's failure to employ a qualified medical director may result in emergency suspension of a license.

Specialty clinics are also subject to provisions requiring the filing of satisfactory proof of compliance with licensure laws and rules and financial ability to comply; specifying what is necessary for an application for transfer or change of ownership; restricting the selling, leasing, assignment, or otherwise, transfer of a license and limiting its validity to the clinic owners and location for which it was originally issued; and directing when a provisional license or temporary permit may be issued.

The AHCA is authorized to enact rules relevant to: the administration of the clinic administration, regulation, and licensure program, including specific licensure requirements, procedures, forms, and fees; limitations on the number of licensed clinics and licensees; and other matters.

The bill provides that it is a third degree felony for any person to own, operate, or maintain a specialty clinic without obtaining a license, and a second or subsequent violation is a second degree felony. The bill also provides for other third degree felony penalties relating to unlawful acts involving a specialty clinic, and provides for fines, revocations of licenses, and other sanctions regarding non-compliance with certain requirements relating to specialty clinics. The medical or clinic director of a specialty clinic must ensure that all health care practitioners at the clinic provide health care services in accordance with law.

Any business that becomes a specialty clinic after commencing operations must, within 5 days after becoming a specialty clinic, file a license application and is subject to all provisions of law applicable to a specialty clinic.

All charges or reimbursement claims made by or on behalf of a specialty clinic that is required to be licensed, but that is not so licensed, or that is otherwise operating in violation of the law, are unlawful charges, and therefore are noncompensable and unenforceable.

Any person establishing, operating, or managing an unlicensed specialty clinic otherwise required to be licensed, or any person who knowingly files a false or misleading license

application or license renewal application, or false or misleading information relating to such application or department rule, commits a third degree felony. The AHCA may fine, or suspend or revoke the license of, any licensed specialty clinic for operating in violation of the law.

Any person or entity providing health care services which is not a specialty clinic may apply for a certificate of exemption from licensure under its exempt status. A certificate of exemption expires in 2 years and may be renewed. The AHCA must provide a form and require certain information of an applicant for exemption from licensure as a specialty clinic. A person or entity that qualifies as a specialty clinic and has been denied a certificate of exemption must file an initial application and pay a fee.

A specialty clinic must display its license in a conspicuous location within the clinic readily visible to all patients, and must also display an antifraud sign as specified.

Each licensed specialty clinic must file with the AHCA an audited report showing specified information.

The AHCA may institute injunctive proceedings in a court of competent jurisdiction if a violation of the provisions of the Health Care Clinic Act or any minimum standard, rule, or order issued or entered into pursuant to the Act materially affects the health, safety, or welfare of specialty clinic patients or if the violation involves any operation of an unlicensed specialty clinic. The AHCA may terminate the operation of a specialty clinic based on such violation. If action is necessary to protect specialty clinic patients from life-threatening situations, the court may allow a temporary injunction without bond upon proper proof being made. In regard to administrative penalties the AHCA is authorized to impose for a violation, the AHCA must consider the financial benefit to the specialty clinic of committing or continuing the violation.

An action taken to correct a violation must be documented in writing by the owner, medical director, or clinic director of the specialty clinic and verified through follow-up visits by AHCA personnel. The AHCA may impose a fine and, in the case of an owner-operated specialty clinic, revoke or deny a clinic's license, when a clinic medical director or clinic director knowingly misrepresents actions taken to correct a violation. An administrative fine may be imposed on an unlicensed specialty clinic that continues to operate after AHCA notification and on any specialty clinic whose owner fails to apply for a change-of-ownership license and operates the clinic under the new ownership.

The AHCA, as an alternative to or in conjunction with an administrative action against a specialty clinic for violations, must make a reasonable attempt to discuss each violation and recommended corrective action with the owner, medical director, or clinic director of the specialty clinic, prior to written notification. The AHCA may request a plan of corrective action as specified.

The bill provides that certain administrative fines imposed on a specialty clinic be deposited into the Health Care Trust Fund.

The AHCA must receive, document, and process complaints about specialty clinics and complaints to the DIF's Office of Fiscal Integrity (OIF) upon receipt of any sworn affidavit that

asserts the existence of facts evidencing possible billing fraud. The DIF must report findings to the AHCA for any appropriate licensure action and refer possible criminal law violations to appropriate prosecutorial agencies and provide investigative assistance to those agencies as required. Any person submitting a sworn complaint that is determined to be totally without factual basis commits a first degree misdemeanor.

The OIF must conduct unannounced reviews, investigations, analyses, and audits to investigate complaints and to determine whether specialty clinic billings are fraudulent or unlawful, and the DIF may enter upon the premises of the clinic during regular business hours and demand and immediately secure copies of billing and other records of the clinic that will enable it to investigate complaints or determine fraud or unlawful actions. A licensed specialty clinic must allow access to the premises and to billing records or other information to determine compliance with laws. Sanctions are provided for failure to allow such access.

All investigators who are designated by the Chief Financial Officer to perform duties under the Health Care Clinic Act and who are certified law enforcement officers are law enforcement officers of the state authorized to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and other process throughout the state pertaining to fraud investigations as provided.

This bill substantially amends ss. 400.990, 400.9905, 400.991, 400.9915, 400.992, 400.9925, 400.993, 400.9935, 400.994, 400.995, and 456.072, F.S., and creates s. 400.996, F.S.

II. Present Situation:

Health Care Clinic Act - Clinic Licensure

Part XIII of ch. 400, F.S., contains the Health Care Clinic Act (ss. 400.990-400.995, F.S.). Under the act, the AHCA licenses health care clinics, ensures that such clinics meet basic standards, and provides administrative oversight. Any entity that meets the definition of a “clinic” (an entity at which health care services are provided to individuals and charges for reimbursement for such services) must be licensed as a clinic.¹ The definition of clinic includes mobile clinics² and portable equipment providers.³

Every entity that meets the definition of a “clinic” must maintain a valid license with the AHCA at all times, and each clinic location must be licensed separately. A clinic license lasts for a 2-year period. The fees payable by each clinic to the AHCA for licensure cannot exceed \$2,000, adjusted for changes in the Consumer Price Index for the previous 12 months. Each clinic must file in its application for licensure information regarding the identity of the owners, medical providers employed, and the medical director and proof that the clinic is in compliance with applicable rules. The clinic must also present proof of financial ability to operate a clinic. A level

¹ Section 400.9905(4), F.S.

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

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

2 background screening pursuant to ch. 435, F.S., is required of each applicant for clinic licensure. A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense prohibited under the level 2 standards for screening or a violation of insurance fraud under s. 817.234, F.S., within the past 5 years.

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

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

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

Health Care Clinic Act - Exemption from Licensure

Although all clinics must be licensed with the AHCA, s. 400.9905(4), F.S., contains a lengthy list of entities that are not considered a “clinic” for the purposes of clinic licensure. An entity that

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

is licensed in Florida pursuant to various chapters specified⁵ in s. 400.9905(4)(a) - (4)(d), F.S., may be exempt from clinic licensure if it meets one of the following provisions:

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

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

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

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

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

⁶ See footnote 5.

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

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

Exemptions from clinic licensure are also available for the following:

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

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

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

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

Florida's Chief Financial Officer estimates that insurance fraud costs the average Florida family as much as \$1,500 a year in increased premiums and higher costs for goods and services. Motor vehicle insurance fraud and abuse constitute a large part of these costs.¹⁰ Therefore, efforts to reduce fraud and abuse are critical to maintaining a viable no-fault insurance system in this state.

⁸ See footnote 7.

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

¹⁰ Insurance fraud involves intentional deception or misrepresentation intended to result in an unauthorized or illegal benefit (e.g., billing for services not rendered). Insurance abuse usually involves charging for services that are not medically

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

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

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

According to DIF officials, the magnitude of the PIP fraud problem is illustrated by the large number of health care clinics established in Florida under the Health Care Clinic Act (Act). Current figures indicate that over 65 percent¹³ of the more than 2,435 medical clinics licensed by the AHCA statewide are located in Dade, Broward, and Palm Beach counties.¹⁴ Moreover, 4,590 clinics have received exemption certificates and are therefore subject to no state regulation. (This figure does not count the clinics that have decided not to file for an exemption certificate with the AHCA.) Division intelligence indicates that "hundreds" of these clinics have been established primarily in the South Florida area for the sole purpose of perpetrating PIP fraud, according to DIF officials.¹⁵ The types of crimes perpetrated by these clinics often involve fraudulent providers (who fabricate their credentials, bills, or the office itself);¹⁶ medical mills

necessary, do not conform to professionally recognized standards, or are unfairly priced. Abuse may be similar to fraud except that it is not possible to establish that the abusive acts were done with intent to deceive the insurer.

¹¹ The 2005 information is from January through July 2005.

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

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

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

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

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

that provide treatments that are not medically necessary,¹⁷ purposely miscode diagnosis, inflate bills or charge for services that are not rendered; or “doc in the box” schemes where often older medical providers are paid for the use of their license.

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

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

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

Specialty Clinics/Infusion Therapy

According to the Governor’s Office, in 2005, officials from the Federal Bureau of Investigation (FBI) and the Centers for Medicare and Medicaid Services (CMS) approached the State of Florida to request assistance regarding Medicare fraud in South Florida. The fraud involves extreme over-utilization of infusion therapy for Medicare beneficiaries who have AIDS or are HIV positive, by health care clinics in Miami-Dade County. The CMS data indicates aberrant billing of infusions and injections for extremely expensive drugs at medically unbelievable dosages and frequencies.

The Governor’s Office states that, according to the CMS data, Medicare Part B expenditures in Florida for FY 2004 totaled \$9 billion. For the same period, the infusion expenditures alone were greater than \$1 billion. In 2005, billing under infusion codes topped \$3 billion. Florida providers, with fewer AIDS/HIV cases (94,725) than either California (133,292) or New York (162,466), submitted charges three times the total for California (\$524,100,645) and five times the total for New York (\$314,315,002). Florida’s average submitted charge per beneficiary is \$16,389: four times that of California (\$3,932) and nearly ten times that of New York (\$1,935).

The Governor’s office states that the CMS has taken action to address this fraud, with limited success. In 2004, the CMS placed 200 high-volume beneficiaries on an “auto-denial” edit, which capped payments on behalf of these beneficiaries at \$3000 per month. Prior to implementation of

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

this edit, payments on behalf of just one beneficiary were over \$700,000. The CMS implemented a computer edit for specific codes to deny payment. However, as the CMS identifies over-utilized codes, the clinics quickly shift dosages and drugs, billing under different codes, and do so in a very organized fashion.

The Governor's Office states that the CMS believes that, in some cases, no medication is infused; in others, patients who may or may not need the medication are infused with saline, vitamins, or diluted medication; the CMS alleges patients are recruited and paid \$100-\$400 cash for use of their Medicare numbers, or are deceived as to the substance infused; the CMS believes some patients are abandoning their primary care physicians in favor of paying clinics, foregoing necessary care and treatment; and the CMS believes unscrupulous clinic physicians routinely write prescriptions for infusion therapy without ever seeing the patients.

The Governor established the Infusion Clinic Fraud Task Force in August of 2005, to address the concerns raised by the CMS on a state level. According to the Governor's Office, the task force conducted joint federal-state inspections of the highest-billing Miami clinics last fall. As a result of those 17 inspections, the AHCA revoked the licenses of nine clinics and is currently litigating license revocation of two more. The Department of Health suspended or revoked the medical licenses of five practitioners involved in criminal activity associated with these clinics. Law enforcement made one arrest. The Governor's Office further states that the task force determined that the health care clinic licensure act is insufficient to address the fraud problem in infusion clinics, and recommended legislative change to strengthen the law.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.990, F.S., to provide a legislative finding that the additional regulation of specialty health care clinics is necessary to prevent significant fraudulent practices in the provision of infusion therapy services in this state. Additionally, the bill provides that the purpose of the Health Care Clinic Act is to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the AHCA.

Section 2. Amends s. 400.9905(4), F.S., to redefine the criteria under which certain health care providers and practitioners are held to be exempt from licensure under the Health Care Clinic Act.

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

wholly owned by one or more such practitioners or by a practitioner and the spouse, parent, child, or sibling of that practitioner.

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

A new exemption from clinic licensure is created for a clinical facility that is wholly owned by a publicly traded corporation. Publicly traded corporation is defined as a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

In a similar fashion, the bill also broadens the exemption from clinic licensure granted to entities that provide oncology or radiation therapy services by physicians licensed under ch. 458, F.S., or ch. 459, F.S. The bill eliminates the requirement that such entities may provide "only" such services, and it requires such entities to be owned by a corporation whose shares are publicly traded on a registered stock exchange. This broadened exemption may be unnecessary given the new exemption for all facilities owned by a publicly traded company. However, this particular broadened exemption does not require the exchange to be registered with the U.S. Securities and Exchange Commission as a national securities exchange.

The bill defines a "specialty clinic" as a clinic not licensed as a home health agency which provides infusion therapy services either to outpatients who remain less than 24 hours at the facility or to patients who receive such services where they reside. Excluded from this definition are entities licensed under part II, part III, or part IV of ch. 400, F.S. (respectively, nursing homes, assisted living facilities, and home health agencies), or entities licensed under ch. 395, F.S. (hospitals and specified licensed facilities).

The bill defines "infusion therapy" as including, but not being limited to, the therapeutic infusion of substances into, or injection of substances through, the venous peripheral system, consisting of activity that includes: observing, initiating, monitoring, discontinuing, maintaining, regulating, adjusting, documenting, planning, intervening, and evaluating. This definition embraces administration of nutrition, antibiotic therapy, and fluid and electrolyte repletion.

The bill defines “fraud” as deception or misrepresentation made by a person or business entity with the intent that the deception will likely result in an unauthorized benefit to herself or himself or to another person. The term includes any act that constitutes fraud under applicable federal or state law.

Section 3. The bill amends s. 400.991(1)-(4), F.S. Each specialty clinic must be licensed and maintain a valid license with the AHCA. Each specialty clinic location must be licensed separately regardless of whether the clinic or specialty clinic is operated under the same business name or management as another clinic. These requirements already apply to clinics defined under s. 400.9905, F.S.

Each specialty clinic must obtain a separate health care clinic license and must provide to the AHCA, at least quarterly, its projected street location to enable the agency to locate and inspect such specialty clinic. This requirement already applies to mobile clinics.

A specialty clinic operating without a specialty clinic license at the time of the effective date of the bill must be given a reasonable time, not to exceed 6 months from such effective date, to obtain this license. A specialty clinic license must be renewed biennially, just like a clinic license.

Application for a specialty clinic license (like an application for an initial clinic license) or for renewal of an existing license must be notarized on forms furnished by the AHCA and must be accompanied by the appropriate license fee as provided in s. 400.9925, F.S.

The bill amends s. 400.991(5), F.S., to increase the scope of a background screening. The bill requires the AHCA to conduct a background screening of any person or entity that has a pecuniary interest in a clinic who may or may not own stock or an equivalent interest in the clinic, but nonetheless has control over or the authority to approve, directly or indirectly, clinic billing, policy, business activities, or personnel decisions, including, but not limited to, contracted or employed third-party billing persons or entities, managers, and management companies, and persons and entities, directly or indirectly, which lend, give, or gift money of any denomination or any thing of value exceeding an aggregate of \$5,000, for clinic use, with or without an expectation of a return of the money or thing of value, and regardless of profit motive.

The bill authorizes the AHCA to adopt rules to administer subsection (5).

The bill creates a new s. 400.991(6), F.S., which provides that an application for a specialty clinic must contain, in addition to the information required in subsection (5), the following information:

- The correct business name of each business entity and full name of each individual holding any ownership interest of 5 percent or more, or any pecuniary interest of \$5,000 or more, in any legal entity that owns or operates any specialty clinic seeking licensure, whether such ownership or pecuniary interest arose out of a contract, loan, gift, investment, inheritance, or any other source. Individual possession of an ownership or pecuniary interest in any subject specialty clinic includes, but is not limited to, a direct or

indirect interest in: the business operation, equipment, or legend pharmaceuticals used in the clinic; the premises in which the clinic provides its services; or any legal entity that owns any such interest, directly or indirectly, in the business operation of the clinic; the equipment used in providing infusion therapy services at the clinic; the legend pharmaceuticals used at the clinic; or the premises in which the clinic provides its services.

- In the case of an incorporated business entity that holds any ownership interest of 5 percent or more, or any pecuniary interest of \$5,000 or more, in the specialty clinic, copies of the articles of incorporation and bylaws, and the names and addresses of all officers and directors of the corporation.
- On a form furnished by the AHCA, a sworn notarized statement by each business entity and individual that holds any ownership interest of 5 percent or more, or any pecuniary interest of \$5,000 or more, in the subject specialty clinic which discloses the nature and degree of each such ownership or pecuniary interest, and that discloses the source of funds which gave rise to each such ownership or pecuniary interest.
- On a form furnished by the agency, a sworn notarized statement by each individual and business entity that holds any ownership interest of 5 percent or more, or any pecuniary interest of \$5,000 or more, in the subject specialty clinic which discloses whether he or she has been an owner or part owner, individually or through any business entity, of any business entity whose health care license has been revoked or suspended in any jurisdiction.
- On a form furnished by the agency, an estimate of the costs for establishing the specialty clinic and the source of funds for payment of those costs and for sustaining the operation of the clinic until its operation produces a positive cash flow.

The term “ownership or pecuniary interest” in this subsection does not include any individual whose interest in a specialty clinic arises only out of his or her interest in a lending company, insurance company, or banking institution licensed by this state or any other state; a company regularly trading on a national stock exchange of the United States; or a governmental entity in the United States.

Current subsection (6) is renumbered as subsection (7) and requires that the applicant must file with the application satisfactory proof that the specialty clinic is in compliance with this part and applicable rules (as specified in the subsection), including a demonstration of financial ability to operate a specialty clinic.

Current subsection (7) is renumbered as subsection (8). This subsection contains the requirements for an applicant for clinic licensure, including the background screening of the applicant. The term “applicant” is defined to also include an individual owning or controlling, directly or indirectly, any interest in a specialty clinic. The bill provides that the AHCA may deny or revoke licensure based on information the applicant is required to provide regarding exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs.

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

The bill increases from 5 to 10 years the time period that an applicant must be free of the disqualifying conduct set forth in s. 400.991(7), F.S. Each person required to provide a background screening for clinic licensure must disclose to the AHCA any arrest for any crime for which any court disposition other than dismissal has been made within the past 10 years; failure to do so is a material omission in the application process which can lead to the denial or removal of a clinic exemption or license. If a person subject to background screening under this provision has committed a disqualifying felony offense in the past 10 years, the applicant will be denied clinic licensure.

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

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

The AHCA must deny or revoke a specialty clinic license if an applicant has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any felony involving dishonesty or making a false statement in any jurisdiction within the preceding 10 years, or when any business entity or individual possessing an ownership or pecuniary interest in the specialty clinic also possessed an ownership or pecuniary interest, individually or through

any business entity, in any health care facility whose license was revoked in any jurisdiction during the pendency of that interest.

The AHCA may not issue a specialty clinic license to any applicant to whom the agency has sent notice that there is a pending question as to whether one or more of the individuals with an ownership of 5 percent or more or with a pecuniary interest of \$5,000 or more in the clinic has a disqualifying criminal record. Agency notice requirements are specified. The AHCA must deny a specialty clinic license application when the applicant has failed to resolve a criminal background screening issue.

Section 4. Amends s. 400.9915, F.S., to include specialty clinics in this section that currently applies to a clinic as defined in s. 400.9905, F.S., so that specialty clinics will also be subject to requirements regarding AHCA inspections as part of the initial license application or renewal application, unannounced AHCA inspections to determine compliance with licensure laws and rules, and emergency suspension of a license for not allowing AHCA access to the clinic premises and billing and other specified records as part of an inspection of failing to employ a qualified medical director.

Section 5. Amends s. 400.992, F.S., to include specialty clinics in this section that currently applies to a clinic as defined in s. 400.9905, F.S., so that specialty clinics will also be subject to provisions of the section requiring the filing of satisfactory proof of compliance with licensure laws and rules and financial ability to comply; specifying what is necessary for an application for transfer or change of ownership; restricting the selling, leasing, assignment, or otherwise, transfer of a license and limiting its validity to the clinic owners and location for which originally issued; and determining when a provisional license or temporary permit may issue.

Section 6. Amends s. 400.9925, F.S., to provide the AHCA with the same authorization to enact rules relevant to a specialty clinic as is currently provided for rules relevant to a clinic as defined in s. 400.9905, F.S. These rules pertain to the administration of the clinic administration, regulation, and licensure program, and include specific licensure requirements, procedures, forms, and fees; limitations on the number of licensed clinics and licensees, and other matters.

Section 7. Amends s. 400.993, F.S., to make penalty and fine provisions of the section relevant to unlicensed clinics applicable as well to unlicensed specialty clinics. It is a third degree felony for any person to own, operate, or maintain a specialty clinic without obtaining a license. A second or subsequent violation is a second degree felony. Any person who owns, operates, or maintains a specialty clinic due to a change in this part or a modification in agency rules within 6 months after the effective date of such change or modification and who, within 10 working days after receiving notification from the agency, fails to cease operation or apply for a license under this part commits a third degree felony.

Any specialty clinic that fails to cease operation after agency notification may be fined for each day of noncompliance pursuant to this part. When a person has an interest in more than one specialty clinic, and fails to obtain a license for any one of these clinics, the agency may revoke the license, impose a moratorium, or impose a fine pursuant to this part on any or all of the licensed specialty clinics until such time as the unlicensed clinic or specialty clinic is licensed or ceases operation. Any person or health care provider who is aware of the operation of an

unlicensed specialty clinic must report that facility to the AHCA. Failure of the provider to report a specialty clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board. The AHCA may not issue a license to a specialty clinic that has any unpaid fines assessed under this part.

Section 8. Amends s. 400.9935, F.S., to require that the medical or clinic director of a clinic or specialty clinic ensure that all health care practitioners at the clinic provide health care services in accordance with subsection (6), which is created by the bill, and which provides that all persons providing health care services to individuals must comply with the licensure laws and rules under which that person is licensed to provide such services or as otherwise provided by law.

Additionally, the clinic or medical director is limited to being the medical or clinic director of a maximum of five health care clinics with a cumulative total of no more than 200 employees and persons under contract with the clinic at a given time. However, the AHCA may allow for waivers to the limitations upon a showing of good cause and if the agency determines that the medical director will be able to adequately perform his or her duties. Additionally, all persons providing health care services to individuals in a clinic must comply with the licensure laws and rules under which that person is licensed to provide such services or as otherwise provided by law.

Any business that becomes a specialty clinic after commencing operations must, within 5 days after becoming a specialty clinic, file a license application under this part and is subject to all provisions of this part applicable to a specialty clinic. These same requirements currently apply to a clinic as defined in s. 400.9905, F.S.

All charges or reimbursement claims made by or on behalf of a specialty clinic that is required to be licensed under this part, but that is not so licensed, or that is otherwise operating in violation of this part, are unlawful charges, and therefore are noncompensable and unenforceable. This same provision currently applies to a clinic as defined in s. 400.9905, F.S.

Any person establishing, operating, or managing an unlicensed specialty clinic otherwise required to be licensed under this part, or any person who knowingly files a false or misleading license application or license renewal application, or false or misleading information related to such application or department rule, commits a third degree felony. This same penalty provision currently applies to a clinic as defined in s. 400.9905, F.S.

The AHCA may fine, or suspend or revoke the license of, any specialty clinic licensed under this part for operating in violation of the requirements of this part or the rules adopted by the agency. This same penalty provision currently applies to a clinic as defined in s. 400.9905, F.S.

Any person or entity providing health care services which is not a specialty clinic may voluntarily apply for a certificate of exemption from licensure under its exempt status. This same provision currently applies to a clinic as defined in s. 400.9905, F.S.

The bill provides that certificates of exemption expire in 2 years and may be renewed.

The AHCA must provide a form that requires the name or names and addresses, a statement of the reasons why the applicant is exempt from licensure as a health care clinic or a specialty clinic, and other information deemed necessary by the agency. The signature on an application for a certificate of exemption must be notarized and signed by persons having knowledge of the truth of its contents. An exemption is not transferable and is valid only for the reasons, location, persons, and entity set forth on the application form. A person or entity claiming an exemption or issued a current certificate of exemption must be exempt from the licensing provisions at all times or such claim or certificate is invalid from the date that such person or entity is not exempt.

The AHCA must charge an applicant for a certificate of exemption a fee of \$100 to cover the cost of processing the certificate or the actual cost of processing the certificate, whichever is less. An application for the renewal of such certificate must be submitted to the agency prior to the expiration of such certificate. The AHCA may investigate any applicant, person, or entity claiming an exemption for purposes of determining compliance when such certificate of exemption is sought. Authorized personnel of the AHCA have access to the premises of any clinic for the sole purpose of determining compliance with an exemption, and also have access to all billings and records indicated in s. 400.9915(2), F.S. (unannounced inspection and access to billing records, etc., of clinics by an authorized officer or employee of the AHCA to determine compliance), and agency rules.

The AHCA may deny or withdraw a certificate of exemption when a person or entity does not qualify for the exemption. Such certificate is considered withdrawn when the agency determines that an exempt status cannot be confirmed. The provisions applicable to the unlicensed operation of a health care clinic or specialty clinic apply to any health care provider that self-determines or claims an exemption or that is issued such certificate if, in fact, such clinic does not meet the exemption claimed. The bill provides that it is a third degree felony for any person or entity to submit an application for a certificate of exemption which contains fraudulent or material and misleading information.

A response to a request in writing for additional information or clarification must be filed with the agency no later than 21 days after receipt of the request or the application shall be denied. The agency shall grant or deny an application for a certificate of exemption in accordance with s. 120.60(1), F.S. (requirements under the Administrative Procedure Act relating to an agency's review of an application for a license). A person or entity that qualifies as a health care clinic or specialty clinic and has been denied a certificate of exemption must file an initial application and pay the fee. Such certificate is valid only when issued and current.

The AHCA must issue an emergency order of suspension of a certificate of exemption when the agency finds that the applicant has provided false or misleading material information or omitted any material fact from the application for a certificate of exemption which is permitted or required, or has submitted false or misleading information to the agency when self-determining an exempt status and materially misleading the agency as to such status.

A specialty clinic, like a clinic, must display its license in a conspicuous location within the clinic readily visible to all patients.

Every licensed specialty clinic must file with the AHCA no less frequently than annually, including concurrently with the filing of any change of ownership application, upon forms to be furnished by the agency, an audited report showing the following information:

- The number of patients served by the specialty clinic during the previous 12-month period, which report may exclude any partial month for the month when the report was prepared;
- Total specialty clinic operating expenses;
- Gross patient charges by payor category, including Medicare, Medicaid, county indigent programs, any other governmental programs, private insurance, self-paying patients, nonpaying patients and other payees;
- The cost of operation of the specialty clinic during the previous 12-month period, excluding any partial month during which time the report was prepared;
- Unless the specialty clinic can demonstrate that the clinic already has furnished the required information regarding a particular subject individual, the full name of any individual who became an owner or became possessed of any pecuniary interest in the subject clinic since the last report to the agency, along with the disclosure of the information required by s. 400.9961(2), F.S., as to such individual; and
- A current statement of the source of funds for payment of the costs of establishing the specialty clinic and for sustaining the operation of the specialty clinic until its operation produces a positive cash flow.

Every licensee of a specialty clinic has a continuing obligation to comply with this part and to report to the AHCA any change of circumstance related to the clinic's continuing compliance with this part. Such change of circumstance includes, but is not limited to, any change in the ownership of the specialty clinic, the addition of any individual or business entity possessing a pecuniary interest in the specialty clinic, the employment of any individual as a member of the specialty clinic's staff who would be required to undergo a criminal background screening if such individual had been an employee at the time of the initial licensure, and any change in the medical or clinic director. The clinic must furnish the information required about and of such individuals under this part and s. 400.991, F.S., within 30 days of the occurrence of such change of circumstance.

A clinic or specialty clinic must display a sign in a conspicuous location within the clinic readily visible to all patients indicating that, pursuant to s. 626.9892, F.S. (Anti-Fraud Reward Program and reporting of insurance fraud), the DIF may pay rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the DIF arising from violations of s. 440.105, F.S. (workers' compensation fraud), s. 624.15, F.S. (willful violations of the Insurance Code), s. 626.9541, F.S. (unfair methods of competition and unfair or deceptive acts or practices), or s. 817.234, F.S. (false and fraudulent insurance claims). An authorized employee of the DIF may make unannounced inspections of a licensed clinic or specialty clinic as necessary to determine whether the clinic is

in compliance with the signage requirements, and the clinic must allow full and complete access to the premises to such authorized employee who makes an inspection to determine compliance with the signage requirements.

Section 9. Amends s. 400.994, F.S., to provide that the AHCA may institute injunctive proceedings in a court of competent jurisdiction if a violation of the provisions of this part or any minimum standard, rule, or order issued or entered into pursuant to this part materially affects the health, safety, or welfare of specialty clinic patients or if the violation involves any operation of an unlicensed specialty clinic. The AHCA may also terminate the operation of a specialty clinic if a violation of any provision of this part, or any rule adopted pursuant to this part, materially affects the health, safety, or welfare of specialty clinic patients.

If action is necessary to protect specialty clinic patients from life-threatening situations, the court may allow a temporary injunction without bond upon proper proof being made. If it appears by competent evidence or a sworn, substantiated affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, must enjoin operation of the specialty clinic.

The discussed provisions currently apply to violations involving clinics defined in s. 400.9905, F.S.

Section 10. Amends s. 400.995, F.S., which relates to administrative penalties the AHCA is authorized to impose for violations. A number of factors are provided that the AHCA must consider in determining the appropriate penalty. The bill specifies that the AHCA must consider the financial benefit to the specialty clinic of committing or continuing the violation.

Any action taken to correct a violation shall be documented in writing by the owner, medical director, or clinic director of the specialty clinic and verified through follow-up visits by AHCA personnel. The agency may impose a fine and, in the case of an owner-operated specialty clinic, revoke or deny a clinic's license when a clinic medical director or clinic director knowingly misrepresents actions taken to correct a violation.

Any unlicensed specialty clinic that continues to operate after AHCA notification is subject to a \$1,000 fine per day. Any licensed specialty clinic whose owner, medical director, or clinic director concurrently operates an unlicensed clinic or specialty clinic shall be subject to an administrative fine of \$5,000 per day. Any specialty clinic whose owner fails to apply for a change-of-ownership license in accordance with s. 400.992, F.S., and operates the specialty clinic under the new ownership is subject to a fine of \$5,000.

The AHCA, as an alternative to or in conjunction with an administrative action against a specialty clinic for violations of this part and adopted rules, must make a reasonable attempt to discuss each violation and recommended corrective action with the owner, medical director, or clinic director of the specialty clinic, prior to written notification. The agency, instead of fixing a period within which the specialty clinic must enter into compliance with standards, may request a plan of corrective action from the specialty clinic which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

Administrative fines paid by any specialty clinic under this section shall be deposited into the Health Care Trust Fund.

The described provisions currently apply to clinics as defined in s. 400.9905, F.S.

Section 11. Section 400.996, F.S., is created. The AHCA must receive, document, and process complaints about specialty clinics. Upon receipt of any complaint that asserts the existence of facts evidencing possible billing fraud by a specialty clinic or by any employee of a specialty clinic, the agency must request the complainant to make such assertions by sworn affidavit. Upon receipt of any sworn affidavit that asserts the existence of facts evidencing possible billing fraud by a specialty clinic or any of its employees, the agency must refer the complaint to the DIF's Office of Fiscal Integrity.

The DIF must report findings to the AHCA for any appropriate licensure action. Such report must include a statement of facts as determined by the DIF to exist, specifically with regard to the possible violations of licensure requirements. If during an investigation the DIF has reason to believe that any criminal law of this state has or may have been violated, it must refer such investigation to appropriate prosecutorial agencies and must provide investigative assistance to those agencies as required. The investigating authority and the AHCA must cooperate with each other with respect to preparing a record and sharing information from which the agency may determine if any action for sanctions under this part by the agency is warranted.

Any person submitting a sworn complaint that initiates a complaint investigation pursuant to this section, which sworn complaint is determined to be totally without any factual basis to support the assertions made in the complaint that facts existed evidencing possible fraudulent practices by a specialty clinic or any of its employees, commits a first degree misdemeanor.

The DIF's Office of Fiscal Integrity must conduct unannounced reviews, investigations, analyses, and audits to investigate complaints and, as necessary, to determine whether specialty clinic billings are fraudulent or unlawful. The DIF is expressly authorized to enter upon the premises of the clinic during regular business hours and demand and immediately secure copies of billing and other records of the clinic that will enable it to investigate complaints or determine whether specialty clinic billings are fraudulent or unlawful. A licensed specialty clinic must allow full, complete, and immediate access to the premises and to billing records or information to any such officer or employee who conducts a review, investigation, analysis, or audit to determine compliance with this part and with applicable rules. The failure to allow full, complete, and immediate access to the premises and to billing records or information to any DIF or AHCA representative who attempts to conduct a review, investigation, analysis, or audit to determine compliance with this part constitutes a ground for emergency suspension of the license by the AHCA pursuant to s. 120.60(6), F.S.

All investigators who are designated by the Chief Financial Officer to perform duties under this part and who are certified under s. 943.1395, F.S., are law enforcement officers of the state. Such investigators have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and other process throughout the state pertaining to fraud investigations under this section.

Section 12. Amends s. 456.072, F.S., to provide that intentionally providing false information on an application for a certificate of exemption from clinic licensure under part XIII of ch. 400, F.S., constitutes a ground for disciplinary action as provided in that section, such as suspension or revocation of a license.

Section 13. The bill takes effect on January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of 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 Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has the potential to subject more entities to the clinic licensure process, subjecting them to additional costs, requirements, and oversight by the AHCA. An entity seeking to retain a certificate of exemption will have to re-apply for a renewal of the certificate every 2 years, paying the \$100 application fee each time.

Representatives from the AHCA and the DIF assert that the provisions of the bill will reduce personal injury protection insurance fraud, which is a large and growing problem in the health care clinic arena.

C. Government Sector Impact:

There will be an increase in the AHCA's oversight responsibilities over clinics and in exempting entities that file for a certificate of exemption from clinic licensure. Limiting certificate of exemptions to 2 years will increase renewal application fees paid to the AHCA with a corresponding increase in workload to process the renewal applications.

The Criminal Justice Impact Conference (CJIC) has not yet met to determine if the third degree felony for a fraudulent application for a certificate of exemption has any prison bed impact. However, this offense is an unranked third degree felony, and the CJIC generally determines that unranked third degree felonies have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
