

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 629 Health Care Clinics
SPONSOR(S): Health Care Regulation Policy Committee, Kreegel
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Insurance, Business & Financial Affairs Policy Committee; Health Care Regulation Policy Committee; General Government Policy Council.

SUMMARY ANALYSIS

In 2003, the Florida Legislature enacted the "Health Care Clinic Act" to curtail fraud and abuse in the personal injury protection (PIP) insurance system. Under Florida's Motor Vehicle No-Fault Law, motor vehicle owners are required to maintain \$10,000 of PIP coverage, which is available for certain express damages sustained in a motor vehicle accident, regardless of fault.

Under the Health Care Clinic Act, entities that provide health care services to individuals and which tender charges for reimbursement for such services are defined as "clinics" and must obtain a license to operate from the Agency for Health Care Administration. In addition to providing for the licensure of clinics, the act also sets forth a listing of entities that are exempted from the definition of clinic. Exempt entities are not subject to licensure and regulation under the act.

House Bill 629 exempts from the definition of clinics under the Health Care Clinic Act entities that do not seek reimbursement from insurance companies for medical services paid pursuant to PIP coverage. Further, the bill requires the Office of Insurance Regulation to issue a unique identification number to each licensed clinic or certified exempt entity which requests it, and authorizes PIP carriers to decline reimbursement to clinics and exempt entities not possessing such a number.

The bill provides an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **State Health Care Clinics**

##### **a. Licensure**

Part X of ch. 400, F.S., contains the Health Care Clinic Act (the act) (ss. 400.990-400.995, F.S.). The act was passed in 2003 to reduce fraud and abuse in the personal injury protection (PIP) insurance system. Florida's Motor Vehicle No-Fault Law<sup>1</sup> requires motor vehicle owners to maintain \$10,000 of personal injury protection (PIP) insurance. PIP benefits are available for certain express damages sustained in a motor vehicle accident, regardless of fault.

Pursuant to the act, the Agency for Health Care Administration (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 which tenders charges for reimbursement for such services...") must be licensed as a clinic.<sup>2</sup>

Every entity that meets the definition of a "clinic" must maintain a valid license with the AHCA at all times,<sup>3</sup> 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 as a clinic. A level 2 background screening pursuant to ch. 435, F.S., is required of each applicant for clinic licensure. A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense prohibited under the level 2 standards for screening or a violation of insurance fraud under s. 817.234, F.S., within the past 5 years.

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<sup>1</sup> Sections 627.730-627.7405, F.S., the Florida Motor Vehicle No-Fault Law, were repealed on October 1, 2007 pursuant to s. 19, ch. 2003-411 L.O.F. The No-Fault Law was revived and reenacted effective January 1, 2008 pursuant to ch. 2007-324 L.O.F.

<sup>2</sup> Section 400.9905(4), F.S.

<sup>3</sup> AHCA presently regulates approximately 2,200 health care clinics throughout Florida. Correspondence from AHCA on file with the Insurance, Business & Financial Affairs Policy Committee.

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:

- 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.

Licensed clinics are subject to unannounced inspections by Division of Insurance Fraud personnel and must allow full and complete access to the premises and to billing records. The AHCA 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.

#### **b. Exemptions from Licensure<sup>4</sup>**

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

- Entities licensed or registered by the state under one or more of the specified practice acts and that only provide services within the scope of their license;
- Entities that own, directly or indirectly, an entity licensed or registered by the state under one or more of the specified practice acts and that only provide services within the scope of their license;
- Entities that are 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 their license.
- Entities that are exempt from federal taxation under 26 U.S.C. sec. 501(c)(3) or sec. 501(c)(4);
- A community college or university clinic;
- Entities owned or operated 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.

#### **Florida Motor Vehicle No-Fault Law**

In Florida, motorists are required to maintain personal injury protection (PIP) coverage and property damage liability coverage.<sup>5</sup> PIP provides \$10,000 of coverage for the following: payment of 80 percent of reasonable medical expenses, 60 percent of loss of income, and a death benefit of \$5,000 or the remainder of the unused PIP benefits, whichever is less, for bodily injury sustained in a motor vehicle accident, without regard to fault. PIP covers the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the motor vehicle. This coverage also provides the policyholder with immunity from

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<sup>4</sup> AHCA issues approximately 600 exemptions per year. However, such exemptions are on the “honor system” and clinics must voluntarily obtain a certificate of exemption from health care clinic licensure. Correspondence from AHCA on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>5</sup> Section 627.7275, F.S.

liability for economic damages (medical expenses) up to the \$10,000 policy limits and for non-economic damages (pain and suffering) for most injuries.

The most common types of PIP fraud are health care clinic fraud and staged accidents.<sup>6</sup> In fiscal year 2007/2008, nearly half of the Division of Insurance Fraud's convictions involved fraudulent claims for PIP benefits and there were 1,176 complaints of fraudulent activity committed by health care providers.<sup>7</sup>

### **Effect of the Bill**

House Bill 629 exempts from the definition of clinics under the Health Care Clinic Act entities that do not seek reimbursement from insurance companies for medical services paid pursuant to PIP coverage. Thus, such entities are not subject to licensure and regulation under the act.

In addition, the bill requires the Office of Insurance Regulation (OIR) to issue a unique identification number to each licensed clinic or certified exempt entity which requests it, and authorizes PIP carriers to decline reimbursement to clinics and exempt entities not possessing such a number. The bill requires OIR to publish the identification numbers and provider names on its website in a searchable format.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 400.9905, F.S., relating to definitions; excludes additional entities from the regulatory requirements of the Health Care Clinic Act (ss. 400.990-400.995, F.S.).

**Section 2.** Amends s. 400.9935, F.S., relating to clinic responsibilities; requiring the Office of Insurance Regulation to issue a unique identification number to certain licensed or exempt clinics, upon request.

**Section 3.** Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims; providing that PIP carriers are not required by pay claims submitted by a provider not holding a unique identification number issued by the Office of Insurance Regulation.

**Section 4.** Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

Indeterminate reduction to AHCA. According to AHCA, the number of clinics that accept personal injury protection payments cannot be determined.<sup>8</sup>

#### **2. Expenditures:**

Indeterminate reduction to AHCA. According to AHCA, the number of clinics that accept personal injury protection payments cannot be determined.<sup>9</sup> Indeterminate increase to OIR. The number of licensed or exempt clinics that accept personal injury protection payments, and will seek a unique identification number from OIR, cannot be determined.

<sup>6</sup> See Report Number 2006-102, "Florida's Motor Vehicle No-Fault Law," by staff of the Florida Senate Banking and Insurance Committee. Available at: <http://www.flsenate.gov> (last accessed April 7, 2009).

<sup>7</sup> Correspondence from the Department of Financial Services on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>8</sup> Correspondence from AHCA on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>9</sup> Correspondence from AHCA on file with the Insurance, Business & Financial Affairs Policy Committee.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent that additional entities are exempted from licensing and registration requirements under the Health Care Clinic Act, such entities will not be required to pay a licensing fee every two years.

**D. FISCAL COMMENTS:**

See comments in the section entitled "Fiscal Impact on State Government: Revenues."

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill will exempt from regulatory oversight by the Agency for Health Care Administration (AHCA) an unknown number of entities that will not be considered "clinics" under the Health Care Clinic Act.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2009, the Health Regulation Policy Committee adopted a strike-all amendment. The amendment requires the Office of Insurance Regulation (OIR) to issue a unique identification number to each licensed or certified exempt clinic which requests it, and authorizes PIP carriers to decline reimbursement to clinics not possessing such a number. The bill requires OIR to publish the identification numbers and provider names on its website in a searchable format.

The analysis is drafted to the committee substitute.