

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 486

INTRODUCER: Senators Sobel and Gaetz

SUBJECT: Health Care Clinic Act

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	Pre-meeting
2.			AHS	
3.			FP	

I. Summary:

SB 486 redefines “clinic” to include any entity that provides health care services to individuals and “that receives remuneration” for the services, rather than entities that “tender charges for reimbursement.” Unless otherwise exempt, clinics that currently accept “cash-only” will be required to apply for a health care clinic license.

The bill revises the term “applicant” to include an individual who owns or controls, directly or indirectly, any interest in a clinic, rather than 5 percent or more interest. A level 2 background screening is required for applicants and an applicant who has an arrest awaiting final disposition for, or has been convicted of, a felony or crime punishable by imprisonment of one year or more is ineligible for licensure.

The Agency for Health Care Administration (AHCA) must deny the application for a clinic license, or the renewal of a clinic license, by an applicant who has been previously found to have committed an act that resulted in the suspension or revocation of a clinic license.

The bill subjects licensed clinics to an administrative fine of \$5,000 per day if the medical director or clinical director fails to ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.

The bill adds an exception from the licensing requirement for rehabilitation entities certified under 42 C.F.R. part 485, subpart H.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Health Care Clinic Act

Part X of ch. 400, F.S., is known as the Health Care Clinic Act (the Act). The purpose of the 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.¹

“Clinic” means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services.² Health care clinics in the state must be licensed by the AHCA;³ however, there are numerous exclusions from the definition of “clinic” in s. 400.9905, F.S.,⁴ and from the requirement to obtain a license as a clinic. The definition of “clinic” includes only entities that “tender charges for reimbursement.” The AHCA interprets this phrase to solely include entities that bill third parties, such as Medicare, Medicaid, and insurance companies. Entities that provide health care services and accept “cash only” for services are excluded from the definition of “clinic” and are not subject to licensure by the AHCA.⁵

Clinic License Application

In order to obtain a license, an applicant must file an application with the AHCA and pay a fee not to exceed \$2,000.⁶ The Act defines “applicant” to mean an individual owner, corporation, partnership, firm, business, association, or other entity that owns or controls, directly or indirectly, 5 percent or more of an interest in the clinic and that applies for a clinic license.⁷ The application requires a variety of information, including, but not limited to, the name, residence and business address, phone number, social security number, and license number of the medical or clinic director. The applicant must also provide proof of compliance with the Act, including a listing of services to be provided, the number and discipline of each professional staff member to be employed and proof of financial ability to operate.⁸ The AHCA requires a level 2 background screening for applicants and personnel as required in s. 408.809(1)(e), F.S., pursuant to ch. 435 and s. 408.809, F.S.⁹

Clinic Director Responsibilities

The Act requires that each clinic must appoint a medical director or clinic director who must agree in writing to accept legal responsibility for the following activities on behalf of the clinic:¹⁰

- Have signs identifying the medical director or clinic director posted in a conspicuous location within the clinic readily visible to all patients.

¹ Section 400.990, F.S.

² Section 400.9905(4)

³ Section 400.991, F.S.

⁴ Section 400.9905(4)(a)-(n), F.S.

⁵ See the AHCA’s bill analysis for SB 486 (2015) on file with staff of the Committee on Health Policy.

⁶ *Supra* note 3 and s. 400.9925(3), F.S.

⁷ Section 400.9905(2), F.S.

⁸ *Supra* note 3.

⁹ Section 400.991(5)(b), F.S.

¹⁰ Section 400.9935, F.S.

- Ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.
- Review any patient referral contracts or agreements executed by the clinic.
- Ensure that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided.
- Serve as the clinic records owner.
- Ensure compliance with the recordkeeping, office surgery, and adverse incident reporting requirements.
- Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.
- Not refer a patient to the clinic if the clinic performs magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography.
- Ensure that the clinic publishes a schedule of charges for the medical services offered to patients.

Unlicensed Clinics and Administrative Penalties

The Act provides that operating a clinic without a license is a third degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S., with each day of continued operation being a separate offense.¹¹ Any person found guilty of unlicensed activity a second or subsequent time commits a felony of the second degree, with each day of continued operation being a separate offense.¹² Additionally, any health care provider who is aware of the operation of an unlicensed clinic shall report that facility to the AHCA. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.¹³

The AHCA also has the authority to deny the application for a license renewal, revoke and suspend the license, and impose administrative fines of up to \$5,000 per violation for violations of the requirements of this part or rules of the AHCA. In determining if a penalty is to be imposed and in fixing the amount of the fine, the AHCA will consider the following factors:¹⁴

- The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.
- Actions taken by the owner, medical director, or clinic director to correct violations.
- Any previous violations.
- The financial benefit to the clinic of committing or continuing the violation.

Each day of continuing violation after the date fixed for termination of the violation constitutes an additional, separate, and distinct violation. Any action taken to correct a violation shall be documented in writing by the owner, medical director, or clinic director of the clinic and verified through follow up visits by AHCA personnel.¹⁵

¹¹ Section 400.993(1), F.S.

¹² Section 400.993(2), F.S.

¹³ Section 400.993(3), F.S.

¹⁴ Section 400.995, F.S.

¹⁵ *Id.*

Any licensed clinic whose owner, medical director, or clinic director concurrently operates an unlicensed clinic shall be subject to an administrative fine of \$5,000 per day. Any clinic whose owner fails to apply for a change-of-ownership license and operates the clinic under the new ownership is subject to a fine of \$5,000. During an inspection, the agency shall make a reasonable attempt to discuss each violation with the owner, medical director, or clinic director of the clinic, prior to written notification.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., by redefining “clinic” to include any entity that provides health care services to individuals and “that receives remuneration” for the services, rather than entities that “tender charges for reimbursement.” A clinic that receives remuneration for services would include services paid by cash or a third-party payer. Clinics that currently accept “cash only” will be required to apply for a health care clinic license.

The bill also makes technical changes.

Section 2 amends s. 400.991, F.S., by revising the term “applicant” to include an individual who owns or controls, directly or indirectly, *any* interest in a clinic. This revision changes the amount of ownership interest from 5 percent or more to any percent. The bill provides that the AHCA will require a level 2 background screening for applicants.

The bill defines “convicted” to mean a finding of guilt, regardless of adjudication, the acceptance of a plea of nolo contendere or guilty by a court, or an adjudication of delinquency if the record has not been sealed or expunged.

The bill provides that in addition to disqualifying offenses listed in ss. 435.04 and 408.809, F.S., an applicant may not have an arrest awaiting final disposition for, or have been convicted of, a felony or a crime punishable by imprisonment of 1 year or more. This expands the list of disqualifying offenses to any felony.

The bill adds a new subsection providing that AHCA will deny the application for a clinic license, or the renewal of a clinic license, by an applicant who has been previously found to have committed an act that resulted in the suspension or revocation of a clinic license.

Section 3 amends s. 400.995, F.S., by revising language for administrative penalties. A licensed clinic will be subject to an administrative fine of \$5,000 per day if its medical director or clinical director violates s. 400.9935(1)(b), F.S., which requires that the medical director or clinical director ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.

Section 4 amends s. 627.236, F.S., by adding an entity that is certified under 42 C.F.R. part 485, subpart H, as an exempt entity from the licensing requirement under the Health Care Clinic Act.

¹⁶ *Id.*

Entities certified under 42 C.F.R. part 485, subpart H include providers of outpatient physical therapy and occupational therapy, and speech language pathology services.

Section 5 reenacts ss. 400.991(2), 400.9935(6), 480.0475(1)(a), and 817.234(8)(c), F.S.

Section 6 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Entities that meet the definition of health care “clinic” will require licensure and a fee of \$2,000, if not currently licensed. The AHCA estimates that an additional 250 clinics will require licensure over a 2-year period.

C. Government Sector Impact:

The AHCA reports that the licensure workload is expected to increase by ten percent, requiring four full-time equivalent positions to license, inspect, and handle legal actions. The total non-recurring expenditure for the AHCA is estimated to be \$17,052. Total recurring expenditures are estimated to be \$217,447, with recurring revenues ranging from \$175,800 to \$177,900 annually. The AHCA indicated that the licensure fees will substantially cover the cost of the additional staff, and existing resources can absorb the difference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, the definition of a clinic requires that it tenders charges for reimbursement, usually to insurers, but does not require that the insurer actually pay the clinic the charges. Section 817.234, F.S., makes it a crime to present or cause to be presented a false and fraudulent insurance claim without the requirement of payment. Section 812.014, F.S., makes it a crime to obtain or endeavor to obtain property or monies to which one is not entitled without the requirement that such monies actually be paid or received.

The Florida Department of Financial Services reports that changing the definition of “clinic” to require that monies must not only be billed but actually “received,” would eliminate the act of presenting a false insurance claim and/or endeavoring to obtain money (as it relates to health care clinics) from being a prosecutable crime, unless the victim actually paid the illicit charges and the victim sustains an actual financial loss.

In order to avoid this result, line 37 could be amended to read: remuneration or tenders charges for reimbursement for the

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.9905, 400.991, 400.995, and 627.736.

This bill reenacts the following sections of the Florida Statutes: 400.991(2), 400.9935(6), 480.0475(1)(a), and 817.234(8)(c).

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.