



RE: Health Care Clinic Legislation House Bill 1127 and Senate Bill 1306

http://flhouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1127_.docx&DocumentType=Bill&BillNumber=1127&Session=2015

Date: March 10, 2015

Summary: CFO Jeff Atwater supports proposed legislation for a pair of Insurance Fraud bills that strengthen the Agency for Health Care Administration’s (“AHCA”) Health Care Clinic Act (“HCCA”). The proposed legislation:

- Creates new certificate of exemption mandates for clinics exempted from mandatory licensure in HB 119 and criminal penalties for certain AHCA clinic violations;
- Increases the number of crimes that may be investigated by the Division of Insurance Fraud;
- Requires insurers to have SIU departments with specific requirements and establishes state oversight to help fight insurance fraud;
- Creates additional criminal penalties for unlawful claims, whether paid or not.

HB 1127 - Insurance Fraud by Representative Jennifer Sullivan (R), Parts of Lake and Orange Counties.

SB 1306 - Insurance Fraud (identical) by Senator Rob Bradley (R), Alachua, Bradford and Clay Counties.

The bill (will be used in the singular) does the following:

HCCA: Revises the HB 119 mandatory licensing provisions of §400.9905(4) by clarifying the language and adding a mandatory/renewable certificate of exemption for the physicians (Chiropractor, Medical Physician or Osteopathic Physician) who “wholly own” health care clinics.

The bill modifies the Personal Injury Protection (“PIP”) remedies in §400.9935(3) by:

- Giving AHCA broader rulemaking authority;
- Clarifying the language that the mere tender of a false bill is a violation and makes a violation punishable as criminal theft under §817.014, with penalties ranging to Felony 2.
- Subsection (3) continues to make bills tendered to insurers and other payers by unlicensed clinics, non-compensable and unenforceable.



Clarifies the felony language in §400.9935(4), for unlicensed health care clinic operation by removing some technical language that made its use by law enforcement more difficult. The new language created specific intent by using “knowingly” but this is less complicated than HB 119 felonies on the same subject placed in §627.732. The new language:

- Makes it a felony for any person who establishes, owns, operates, manages, or maintains an unlicensed clinic using AHCA’s main unlicensed statute, §408.812 as the basis of the crime;
- Makes advertising services requiring a clinic license a felony where the current law is silent as to the penalty; each day is a separate offense;
- Makes it mandatory for health care practitioners who know or have reasonable cause to suspect a clinic is unlicensed, to notify the Department of Health licensing board (but not AHCA);
- Makes it a felony for a “person” failing to update a license application within 21 days of a change of application information.

Formerly, this provision applied only to the “clinic” and is now expanded to a “person.” The latter change is only for licensed health care clinics, not exempted clinics.

The current statute, §400.9935(6), contains interesting language in that authorizes AHCA to issue a certificate of exemption plus the new renewal language. This is not a change.

“An entity seeking an initial or renewal a certificate of exemption must publish and maintain a schedule of charges for the medical services offered to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the entity and must include, but is not limited to, the 50 services most frequently provided by the entity.

“A certificate of exemption issued on or before June 30, 2015, expires on June 30, 2017. An initial or renewal certificate of exemption issued on or after July 1, 2015, expires 2 years after the date of issuance.”

A facility required to obtain a certificate of exemption (D.C., M.D. and D.O. “wholly owned” clinics) but does not, is deemed a “clinic” and must have an AHCA health care clinic license in order to bill.

The bill adds the felony language from PIP in HB 119 to the HCCA for “knowingly” filing a false or misleading “initial” or “renewal” application for a certificate of exemption. The language was borrowed from the felony statute, §400.9935(4), that deals only with unlicensed activity and filing false or misleading license application information with AHCA. This change is simpler and cleaner than the HB 119 language on the same subject and is more “law



enforcement” friendly. The term “knowingly” has been interpreted by the courts in the criminal law context as meaning “intentionally, voluntarily.” *State v. Harden*, 938 So. 2d 480, f.n. 7 (Fla. 2006).

The bill codifies some of the language in Rule 59A-33.006 that explains a change of exempt status and requires licensure to be filed within 5 days of “becoming a clinic” as defined in §400.9905(4). This means if the clinic no longer qualifies for an exemption, they are considered unlicensed and must file an application for a license with AHCA to cure the deficiency.

Repeals §400.993 deals with reporting unlicensed activity and provides felonies for unlicensed. This provision is redundant to §400.9935(4), which also provides felonies for unlicensed operation and §408.812 that also deals with clinic unlicensed activity. The repealed section has never been utilized by AHCA or law enforcement.

PIP: Paragraph 627.736(5)(h), the “exceptions” to mandatory AHCA health care clinic licensure, is amended and renumbered adding a threshold basis for mandatory certificates of exemption: e.g., under the amendment, a clinic wholly owned by a Chiropractor (or M.D. or D.O.) who treats 10 or more PIP patients or grosses more than \$100,000 in the previous 12 months could not bill without first having a mandatory certificate of exemption from AHCA (“...may not receive reimbursement under [PIP]...”).

DFS: The bill requires insurers to establish insurance fraud special investigative units under the authority of the Division of Insurance Fraud; requires insurers to have Special Investigative Units with fraud investigation authority; defines terms used in the new section; mandates insurer training and annual training functions; requires written procedures; adds new authority to investigate HCCA felonies. This is a major piece of legislation.