MEMORANDUM

TO: **Elizabeth Dudek, Secretary**
FROM: **Stuart Williams, General Counsel**
DATE: **May 8, 2012**
RE: **Chapter 2012-197, Laws of Florida**

Question

Under the provisions of Chapter 2012-197, Laws of Florida, are entities that currently meet the exemption standards of Section 627.736(5)(h), Florida Statutes, required to be licensed as health care clinics under Part X of Chapter 400, Florida Statutes, as of July 1, 2012?

Answer

No. Chapter 2012-197 directs that such entities not be licensed.

Background

The 2012 Legislature passed, and the Governor signed, Chapter 2012-197, Laws of Florida (the "Act"), relating to personal injury protection insurance. The Act amends certain provisions of Part X, Chapter 400, Florida Statutes, which governs the licensure of health care clinics. Section 2 of the Act amends Section 400.9905(4), Florida Statutes. Subsection (4) lists the entities that are exempt from licensure as a health care clinic. Section 2 of the Act adds the following at the end of the list of exempt entities:

> Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).

Section 10 of the Act amends Section 627.736, Florida Statutes, by adding subsection (5)(h). The pertinent portion provides:

> Section 10. Effective January 1, 2013, subsections (1), (4), (5), (6), (7), (8), (9), (10), and (11) of section 627.736, Florida Statutes, are amended, and subsection (17) is added to that section, to read:
> 627.736 Required personal injury protection benefits; exclusions; priority; claims.
> * * *

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.
(h) As provided in s. 400.9905, an entity excluded from the definition of a clinic shall be deemed a clinic and must be licensed under part X of chapter 400 in order to receive reimbursement under ss. 627.730-627.7405. However, this licensing requirement does not apply to:
1. An entity wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;
2. An entity wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;
3. An entity wholly owned by a chiropractic physician licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;
4. A hospital or ambulatory surgical center licensed under chapter 395;
5. An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395; or
6. An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

Section 18 of the Act provides: "Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012."

Analysis

The "notwithstanding" language of section 2 of the Act entwines the new licensure requirement with the 5(h) exemptions in one sentence. The licensure requirement cannot be logically separated from the exemption because licensure does not stand alone when exemptions are provided for. Licensure and exemption from licensure are two sides of the same coin. The language directs that entities that bill PIP must be licensed *unless exempted under 5(h).* The Legislature clearly intended that entities meeting the 5(h) exemption standards not be licensed. Thus the "notwithstanding" clause contains two directives: license the entities deemed to be clinics, but do not license them if they are exempt under 5(h). Applying the July 1, 2012 effective date to the licensure requirement, while simultaneously applying a January 1, 2013 effective date to the exemptions, would place the Agency in a conundrum so that it could meet neither the licensure directive nor the directive not to license exempt entities. Without applying the exemptions at the time it begins licensing, the Agency cannot determine which entities require licensure. If the Agency were to focus only on the licensure requirement and begin licensing of all the currently exempt entities, it would lead to uncertain and absurd results. *See FDEP v. Contractpoint Fla. Parks,* 986 So. 2d 1260, 1270 (Fla. 2008) ("We have long held that the Court should not interpret a statute in a manner resulting in unreasonable, harsh, or absurd consequences."); *Garcia v. Allstate Ins. Co.*, 372 So. 2d 784, 788 (Fla. 3d DCA 1976) ("In the interpretation of statutes, a court should be astute in avoiding a construction which may be productive of much litigation and insecurity, or which would throw the meaning or administration of the law, or the forms of business, into hopeless confusion or uncertainty."). Entities exempt under 5(h) would be licensed, counter to the directive of the legislation.

Accordingly, the most reasonable construction of the Act, which would avoid the foregoing consequences, is that two different effective dates not be assigned to different parts of the same sentence. Because the licensure requirement is tied to the 5(h) exemptions, the effective dates are reasonably read to coextend. Section 18 of the Act states that a July 1, 2012 effective date applies "except as otherwise expressly provided in the act." Section 10 of the Act expressly provides a January 1, 2013 effective date to the amendment that creates Section 627.736(5)(h). Accordingly, that effective date should apply to the entire "notwithstanding" sentence in Section 2.

The Agency is faced with one sentence that conjoins two legislative directives that are dependent on each other. Applying two different effective dates to the directives in the "notwithstanding" clause would prevent the Agency from achieving both legislative directives, thwarting legislative intent. The guiding purpose in construing a statute is to give effect to the Legislature's intent. *See Goble v. Frohman*, 901 So. 2d 830 (Fla. 2005). Interpreting the Act as intending one effective date to apply to the "notwithstanding" clause would permit the Agency to further the Legislative objectives.

Conclusion

Consonant with applicable rules of statutory construction, the Agency believes that the Act applies the same effective date of January 1, 2013 to both the new licensure requirement and the 5(h) exemption.