



The Florida Senate

Interim Project Report 2007-130

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Committee on Health Regulation

DRAFT LEGISLATION TO CONFORM STATUTES TO 2006 CHANGES TO HEALTH FACILITIES AND SERVICES LICENSURE LAWS

SUMMARY

House Bill 7141 passed in the 2006 Legislative Session, consolidating core licensure requirements for health care providers licensed by the Agency for Health Care Administration in part II of chapter 408, Florida Statutes. *Section 12* of this bill required the Division of Statutory Revision of the Florida Legislature to assist the substantive committees of the Senate and the House of Representatives in preparing draft legislation to conform the Florida Statutes and any legislation enacted during 2006 to the provisions of this bill during the interim between this bill becoming law and the beginning of the 2007 Regular Session of the Legislature.

Staff of the appropriate Senate and House of Representatives substantive committees worked with staff from the Division of Statutory Revision, Senate and House Bill Drafting, and the Agency for Health Care Administration to draft the legislation necessary to meet the requirements of conforming the Florida Statutes to House Bill 7141 and other legislation that passed during the 2006 Session, including corrections to cross references. Proposed Committee Bill HE-1 has been prepared for consideration by the Senate Committee on Health Care.

- Health facility and services licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities, services, and managed care plans;
- Implementation of the certificate-of-need program;
- Operation of the Florida Center for Health Information and Policy Analysis;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in parts II and III of ch. 641, F.S.; and
- Any other duties prescribed by statute or agreement.

The statutory provisions for the health care facilities and services requiring licensure by, or registration with, AHCA are found in chs. 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765, F.S. Health care providers that are regulated by AHCA include drug-free workplace laboratories, birth centers, abortion clinics, crisis-stabilization units, short-term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family-care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for persons with developmental disabilities, health care services pools, health care clinics, clinical

BACKGROUND

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA or agency) is created in s. 20.42, F.S., and its general statutory authority is found in ch. 408, F.S. The agency is the chief health policy and planning entity for the state. The agency is responsible for:

laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

History of Core Licensure Legislation

The initial proposal for core licensure legislation came from AHCA and was approved by the Governor's Office and the Office of Policy and Budget prior to the 2004 Legislative Session. AHCA felt the core licensure legislation was important for several reasons. Some of the reasons were to:

- Reduce confusion for providers and owners of multiple facility/provider types;
- Improve efficiencies in the use of state resources;
- Reduce regulation and paperwork by reducing AHCA processing timeframes and standardizing requirements for background screening, notice of closure, notice of AHCA and abuse hotline information, and others; and
- Establish a biennial licensure period for all providers.

Senate Bill 1680 was introduced and passed by the Senate during the 2004 Session. In the House of Representatives, the bill was approved by the Speaker to be considered as a proposed committee bill of the House Health Care Committee during the 2004 Session. However, the bill was not heard or filed by the committee.

In 2005, core licensure legislation was filed in both the Senate (SB 2608) and House of Representatives (HB 1941). The bill in the Senate was filed late in the process, passed out of the Health Care Committee, but died in the Committee on Children and Families. The bill in the House of Representatives passed out of the Health and Families Council, but died on the calendar.

In 2006, core licensure legislation, without all the conforming changes, passed both houses of the legislature and became law. (HB 7141 - Chapter 2006-192, Laws of Florida). This bill divided ch. 408, F.S., "Health Care Administration," into parts I-IV. Part I is entitled "Health Facility and Services Planning" and consists of ss. 408.031 – 408.7071, F.S. Part II is entitled "Health Care Licensing: General Provisions" and consists of ss. 408.801 – 408.832, F.S. Part III is entitled "Health Insurance Access" and consists of ss. 408.90 – 408.909, F.S. Part IV is entitled "Health and Human Services Eligibility Access System" and consists of ss. 408.911 – 408.918, F.S.

Part II consolidates core licensure requirements for health care providers licensed by the agency. It provides legislative findings, purpose, and applicability and specifies the legislative intent to eliminate unnecessary duplication and variation in licensure requirements for health care providers regulated by the agency. Part II defines and standardizes common terminology and specifies the facilities and services that require licensure. It establishes license fees and provides a method for calculating the annual adjustment of fees. Part II provides a license application process, which requires specified information to be included on the application. It requires the payment of late fees under certain circumstances, authorizes inspections, and authorizes AHCA to establish procedures and rules for the electronic notification and submission of required information.

Part II provides procedures for a change in ownership by a licensee, requiring the transferor to notify the agency in writing within a specified period. It requires providers to have and display a license from AHCA. Part II identifies licensure categories and conditions for issuance of a license. Background screening must be conducted for certain employees. It prohibits unlicensed activity and authorizes administrative fines to be imposed. Part II provides the agency authorization for a moratorium or emergency suspension if conditions present a threat to clients' health, safety, or welfare. It specifies circumstances in which a license may be denied or revoked. The agency is authorized to seek injunctive proceedings under certain circumstances. It requires all fees and fines collected under part II of ch. 408, F.S., to be deposited in the Health Care Trust Fund. Part II authorizes AHCA to adopt rules. The part also provides for certain exemptions from specified licensure requirements for certain providers.

Section 12 of HB 7141 recognized the need to conform the Florida Statutes to the policy decisions reflected in the act and recognized that there may be a need to resolve conflicts between any changes or additions to licensure statutes or other legislation enacted in 2006 and ch. 408, F.S., as amended by the act. The bill required the Division of Statutory Revision to assist relevant substantive legislative committees to prepare draft conforming legislation.

CS/SB 388 (Chapter 2006-197, Laws of Florida)

Committee Substitute for Senate Bill 388 transferred all sections of parts III (assisted living facilities), VII

(adult family-care homes), and V (adult day care centers) of ch. 400, F.S., to newly created parts I, II, and III of ch. 429, F.S., entitled “Assisted Care Communities.” Additionally, the bill made multiple statutory revisions that are needed to accurately reflect the move of part III of ch. 400, F.S. Finally, the Division of Statutory Revision was directed to prepare a reviser’s bill to make conforming changes to the Florida Statutes.

These changes affect the sections of House Bill 7141 that address the portions of ch. 400, F.S. that now need to be amended to be ch. 429, F.S.

METHODOLOGY

Senate and House substantive committee staff contacted the Division of Statutory Revision for assistance in drafting a conforming bill and requested AHCA to provide a first draft of a conforming bill. The Division of Statutory Revision used the draft conforming bill prepared by AHCA to create a second draft. Senate and House substantive committee staff used the second draft of a conforming bill created by the Division of Statutory Revision to work with Senate and House Bill Drafting staff and AHCA staff to produce a third draft of legislation to conform the statutes to both bills that passed during the 2006 Legislative Session, as well as correct cross-references. Proposed Committee Bill HE-1 is the result of the review and editing of the third draft.

FINDINGS

In order to conform the Florida Statutes and any other legislation enacted during the 2006 Legislative Session to the provisions of HB 7141, it is necessary to eliminate duplication and variation in licensure requirements between specific licensure statutes for various types of health care facilities and services and part II of ch. 408, F.S. This requires amending, deleting, and repealing those portions of the specific licensure statutes that are now covered under part II of ch. 408, F.S. Some of the areas affected by the changes are:

- License fees;
- License application process;
- Payment of late fees;
- Inspections;
- The establishment of procedures and rules for the electronic transmission of required information;

- Procedures for the change in ownership;
- Background screening;
- Unlicensed activity;
- Administrative fines;
- Moratoriums and emergency suspensions;
- License denial or revocation;
- Injunctive proceedings;
- Fees and fines to be deposited in the Health Care Trust Fund; and
- License duration.

It is also necessary to specify in the various specific licensure statutes that the provisions of part II of ch. 408, F.S., apply.

Numerous changes to statutory cross-references are required to reflect the movement of parts III, VII, and V of ch. 400, F.S., to parts I, II, and III of ch. 429, F.S., and the resulting renumbering of the parts in ch. 400, F.S.

A bill that opens so many sections of the Florida Statutes can easily become a vehicle for amendments that add new substantive changes, which may or may not be controversial. Proposed Committee Bill HE-1 conforms the law to policy decisions that have already been made in HB 7141 and does not include any new policy changes. If new substantive issues are added to the conforming bill, there is a potential for the bill to become controversial and not pass. Without passage of conforming legislation, the statutes would remain very confusing and would contain conflicting provisions, possibly leading to litigation.

RECOMMENDATIONS

The Legislature should pass conforming legislation as called for in s. 12 of HB 7141. Proposed Committee Bill HE-1 should be considered as the starting point for such conforming legislation.

It is also recommended that the Legislature treat this bill strictly as a conforming bill, not adding new policy issues.