

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 739 CS Health Care
SPONSOR(S): Grimsley
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 484

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|----------------|---------|----------------|
| 1) Health Care Regulation Committee | 8 Y, 0 N, w/CS | Hamrick | Mitchell |
| 2) Criminal Justice Committee | 7 Y, 0 N, w/CS | Bond | Kramer |
| 3) Health Care Appropriations Committee | | | |
| 4) Health & Families Council | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

The Committee Substitute for HB 739 revises chapter 400, part IV, F.S., to change licensure and supervisory standards for home health agencies and nurse registries. The bill revises nurse supervision requirements by eliminating required monthly home visits. It provides a 2-year license to a home health agency and nurse registry, instead of the current 1-year license. A physician's assistant or an advanced registered nurse practitioner may establish and sign treatment orders for skilled services.

The bill alters the due date for receipt of applications for renewal of licenses from 90 days to 60 days prior to expiration of the license. The bill allows AHCA to accept a licensure survey from an AHCA-recognized accrediting agency in lieu of the required agency survey.

This bill provides that a home health agency licensee must provide information demonstrating the applicant's financial ability to operate be compiled, rather than signed by, a certified public accountant.

The bill provides AHCA the authority to deny or revoke a license if the applicant has falsely represented a material fact or has omitted a material fact from the application.

The bill reduces the storage time for patient records.

The bill increases the fines, penalties, and enforcement abilities of AHCA. This bill creates a second degree misdemeanor offense of continuing to operate an unlicensed home health agency more than 10 days after AHCA orders the person to stop operating. This bill creates a second degree misdemeanor for operating a nurse registry without a license, or for falsely advertising that one is licensed as a nurse registry, more than 10 days after AHCA order the person to stop.

The effective date of this bill is July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Increase government --The bill clarifies and provides new regulations to the home health agencies, nurse registries, homemaker and companion agencies.

Promote personal responsibility -- The bill provides more enforcement authority, fines, and sanctions to the Agency for Health Care Administration. This bill creates criminal penalties for wrongful conduct.

B. EFFECT OF PROPOSED CHANGES:

Background

Currently, the home health industry is undergoing change, and competition is occurring among different types of providers. The parties involved are the home health agencies, nurse registries, and homemaker and companion agencies.

HOME HEALTH AIDES, HOMEMAKERS AND COMPANIONS

- **Home Health Aide** is a person who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, or assists in administering medications as permitted in rule and for which the person has received training established by the Agency for Health Care Administration (AHCA).
- **Homemaker** is a person who performs household chores that include housekeeping, meal planning and preparation, shopping assistance, and routine household activities for an elderly, handicapped, or convalescent individual. A homemaker may not provide hands-on personal care to a client. A homemaker must register with AHCA. The registration fee is \$25.00 annually.¹
- **Companion** or **Sitter** is a person who cares for an elderly, handicapped, or convalescent individual and accompanies such individual on trips and outings and may prepare and serve meals to such individual. A companion may not provide hands-on personal care to a client. A companion must register with AHCA.

Types of services provided in the home health setting

- **Personal care** provides assistance to a patient in the activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.
- **Skilled care** provides nursing services or therapeutic services delivered by a health care professional who is licensed under part I of chapter 464; part I, part III, or part V of chapter 468; or chapter 486 and who is employed by or under contract with a licensed home health agency or is referred by a licensed nurse registry.

HOME HEALTH AGENCIES

Home health agencies primarily provide skilled care. Care that home health agencies provide are nursing care; physical, speech, occupational, respiratory and IV therapy; home health aide services;

¹ See s. 400.509 (3), F.S.

homemaker and companion services; home medical equipment; nutritional guidance; and medical social services in the patient's home or place of residence.

A home health agency employs direct employees and contracts out to patients to provide services. The patients may have different staff providing those services in order to make adjustments with staffing issues such as when staff is on vacation or sick.

There are 1,283 licensed home health agencies in Florida as of December 18, 2004. From July 1, 2003-June 30, 2004, 241 applications were processed for new home health agencies. Licenses are issued for a 1-year period and currently cost approximately \$830.00².

The Agency for Health Care Administration (AHCA) currently permits the exemption of accredited home health agencies from licensure surveys in its state rules at 59A-8.003(3), F.A.C., with the condition that the home health agency requests an exemption and provides a survey report from an accrediting body that shows the home health agency is in compliance with state licensing requirements.

As of December 27, 2004, 62 of the 209 accredited home health agencies were exempt from having a state licensure survey conducted by AHCA. Currently, 16.3% of home health agencies are accredited.

Home health agency treatment orders

Section 400.487(2), F.S., requires treatment orders to be signed by the attending physician for a patient who receives skilled care within 30 days from the first date of care. Most orders are received by telephone from the physician's office and some home health agencies are having difficulty obtaining signed orders from physicians within the required 30 days. Federal regulations specify that the physician's orders must be signed prior to billing for services³.

Home health agency supervisory visits

Section 400.487(3), F.S., requires a home health agency to arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services per the direction and approval of the patient. These visits are not mandatory and can be waived by the patient.

Currently, home health agencies are inconsistent in their interpretation of this statute. Some home health agencies are absorbing the cost of the home visit and others are billing the patient for this service. The cost of a home visit by a registered nurse is approximately \$31 per visit.

NURSE REGISTRIES

Nurse registries provide skilled and personal care. Nurse registries are set-up differently than home health agencies in that they hire independent contractors that are registered nurses, certified nurse assistants (CNA), home health aides, licensed practical nurses, homemakers, or companions to provide services to patients in their homes. These individuals are not direct employees of the nurse registry, but are independent contractors. A patient contracts with a nurse registry and the independent contractors for services. The patient makes a direct contract with the individual contractor sent from the nurse registry.

A nurse registry is required to obtain the following information from the independent contractors they refer: name, address, date of birth, and social security number; educational background, and employment history; number and date of the applicable license or certification and renewal information.

² See s. 400.471 (8), F.S.

³ See 42 CFR, Part 484, Medicare Home Health Agency Regulation and Policy; CMS publication 11, Medicare Home Health Agency Manual.

As of December 18, 2004 there were 2,218 licensed nurse registries in Florida. Nurse registries are licensed annually and licensure costs \$1,000.

Nurse registry supervisory visits and care contracts

Persons who receive care from a home health aide or a certified nurse assistant (CNA) must have a physician and the physician must be notified within 48 hours after the contract for care is completed.

A registered nurse must make a monthly visit to each patient who receives services from a home health aide or a CNA to assess the quality of care provided.⁴

The home health agency statutes do not require the same type of supervision for similar care. According to a survey conducted by the Associated Home Health Industries of Florida the average cost of a home visit by a registered nurse is \$29.80 per visit.

Unlicensed Activity within the Home Health Industry

For the period July 1, 2003-June 30, 2004, AHCA received 28 complaints of activity by unlicensed home health agencies, 4 complaints of activity by unlicensed nurse registries, and 10 complaints of activity by unregistered homemaker or companion service. Businesses that are found to be providing services without a license or registration are given a notice of violation and are instructed to obtain a license. Some disregard the notices and continue to operate illegally. The existing laws in chapter 400, F.S., do not provide AHCA with sufficient enforcement authority to require these business entities to either get a license or cease operations. AHCA may seek an injunction when there is an emergency affecting the immediate health and safety of a patient or client.⁵

Effect of Bill

The Committee Substitute for HB 739 revises chapter 400, part IV, F.S., to change licensure and supervisory standards for home health agencies and nurse registries. The bill revises nurse supervision requirements by eliminating required monthly home visits. It provides a 2-year license to a home health agency and nurse registry, instead of the current 1-year license. A physician's assistant or an advanced registered nurse practitioner may establish and sign treatment orders for skilled services.

Definitions

HB 739 requires nurse registries to be licensed.

The bill clarifies that clients can not receive personal care services from companions or sitters. Personal care services are provided to patients who need help in completing activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.

Removes the requirement that the director of nursing has to have specialized training in the home health industry, and deletes the requirement that the director designate a qualified alternate registered nurse to serve during their absence. The bill allows a director of nursing to oversee operations for a maximum of 5 licensed home health agencies located within a service district or immediately neighboring county.

⁴ See s. 400.506 (10), F.S.

⁵ See s. 400.515, F.S.

Licensure

The bill establishes a 2-year home health agency license and nurse registry, instead of the current 1-year license.

A home health agency licensee is required to file all documents demonstrating the applicant's financial ability to operate. The bill provides that information must be compiled by, rather than signed by, a certified public accountant. Applicants for renewal of a license are required to complete questions concerning volume data on the renewal application.

The bill provides AHCA the authority to deny or revoke a license if the applicant has falsely represented a material fact or has omitted a material fact from the application. The bill alters the due date for receipt of applications for renewal of licenses from 90 days to 60 days prior to expiration of the license.

In lieu of its own periodic licensure survey, the bill allows AHCA to accept a survey from an AHCA-recognized accrediting agency. AHCA must receive the accreditation report and the home health agency must authorize the release of the report to AHCA.

Care

The bill clarifies the sources of payment for home health services to include Medicaid, Medicare, private insurance, and personal funds.

The bill establishes that a physician's assistant or an advanced registered nurse practitioner may establish and sign treatment orders for skilled services.

The bill deletes the requirement that the treatment orders must be reviewed within 30 days of the start of care. Currently, home health agencies are required to send a registered nurse to perform a supervisory visit to the home of a patient receiving home health aide services.

The bill deletes the requirement for monthly supervisory visits by an RN to nurse registry patients receiving services from a certified nursing assistant or a home health aide, and instead requires a nurse registry to advise a patient, patient's family, or a person acting on behalf of the patient of the availability of registered nurses to make visits to the patient's home at an additional cost.

Patient Records

The bill designates the records as patient records under s. 400.494, F.S., which provides a public record exemption for information about patients of a home health agency.

The bill requires that patient information can only be disclosed under the provisions of federal regulations, except in specified instances.

The bill increases from 5 years to 6 the period during which a home health agency must maintain records for a patient who receives skilled care.

The bill deletes the requirement that a home health agency must keep a service provision plan on clients who receive non-skilled care.

Penalties

The bill establishes a fine of \$500 for a second or subsequent offense of operating without a home health agency license or nurse registry.

The bill provides authority to AHCA to assess fines against a licensee that fails to include the nurse registry or home health agency license number in any advertisement in print or broadcast media for a second and subsequent offense is \$500.

The bill provides authority to AHCA to institute injunction proceedings in a court of competent jurisdiction to restrain or prevent the establishment or operation of home health agency or nurse registry that does not have a license or is in violation of any provision within chapter 400 or rule adopted by AHCA.

Unlicensed activity of a home health agency is declared a nuisance, detrimental to public health, welfare and safety. AHCA and state attorneys are permitted to bring action for an injunction to stop unlicensed activity.

This bill creates a second degree misdemeanor at s. 400.464(4)(e), F.S., related to unlicensed operation of a home health agency. A person commits the offense if, within 10 days of receiving notification of unlicensed activity from AHCA, the home health agency fails to cease operations and apply for a license. A second degree misdemeanor is punishable by up to 90 days in jail and a fine of up to \$500. Each day of continued unlawful operation is considered a separate offense. This bill also adds s. 400.464(4)(f), F.S., to provide that an unlicensed home health agency is also subject to an administrative fine of \$500 per day of unlicensed operation after notification.

This bill creates a second degree misdemeanor at s. 400.506(8), F.S., related to operation of a nurse registry. Paragraph (a) provides that it is unlawful for a person to provide, offer, or advertise to the public nurse registry services without obtaining a valid license from AHCA. It is also unlawful for any holder of a license to operate a nurse registry to advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds a license. A person who violates this paragraph commits a second degree misdemeanor. A second degree misdemeanor is punishable by up to 90 days in jail and a fine of up to \$500. Each day of continued operation is a separate offense.

This bill creates a second degree misdemeanor at s. 400.506(8)(c), F.S., related to unlicensed operation of a nurse registry. A person commits the offense if, within 10 days of receiving notification of unlicensed activity from AHCA, the nurse registry fails to cease operations and apply for a license. Each day of continued operation is a separate offense. This bill also adds s. 400.506(8)(d), F.S., to provide that an unlicensed nurse registry is also subject to an administrative fine of \$500 per day of unlicensed operation after notification.

The bill provides that employees who have been continuously employed since October 1, 2000 may not be required to undergo criminal background screening. The bill deletes "September 30, 1990," the current date by which an employee must have been employed in order to be exempt from background screening.

The bill provides AHCA the authority to impose administrative fines on a home health agency or nurse registry that does not file an application within the specified timeframe \$50 per day, and may not to exceed \$500.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.461, F.S., to add the licensing of nurse registries to the purpose of the chapter.

Section 2. Amends s. 400.462, F.S., to add new definitions for advanced registered nurse practitioner, direct employee, physician assistant, admission, and amends current definitions.

Section 3. Amends s. 400.464, F.S., regarding home health agencies licensure, to increase renewal to every 2 years.

Section 4. Amends s. 400.471, F.S., regarding the license application for a home health agency, to provide authority to administer fines and revoke licenses.

Section 5. Amends s. 400.487, F.S., to revise requirements for home health service agreements and treatment orders.

Section 6. Amends s. 400.491, F.S., regarding clinical records, to revise ownership and maintenance of patient records.

Section 7. Amends s. 400.494, F.S., to add references to federal requirements for the confidentiality of patient information and delete requirement for written consent for disclosure of patient information.

Section 8. Amends s. 400.506, F.S., regarding the licensing of nurse registries, to increase licensing fees, period of licensure, and revise penalties and sanctions.

Section 9. Amends s. 400.512, F.S., relating to employment screening, to update the date in the affidavit signed by the administrator of each agency or registry, attesting that screening of personnel hired since 2000 has been done.

Section 10. Amends s. 400.515, F.S., to provide additional circumstances under which the agency may petition for an injunction.

Section 11. Provides that the bill will take effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill doubles the maximum licensing fees for home health agencies and nurse registries, but the time period for the license is also doubled, from one to two years. Thus, there is no increase in costs per year for licensing of home health agencies and nurse registries who operate for long periods of time. However, the doubled cost will impact home health agencies and nurse registries in their initial year of operation, and will increased the amount of lost time (licensure time paid for but not used when a licensed entity ceases operation).

D. FISCAL COMMENTS:

Since the license fees and licensure periods are doubled and the receipt of the renewals will continue to be staggered based on the date of issuance, there should be no depletion of the Health Care Trust Fund. The staff time needed to review and compile data on renewal applications will be offset by the reduction in staff time required to renew licenses biennially instead of annually.

The bill increases the licensure time period for home health agencies and nurse registries. The bill increases the licensure fees based on longer time periods. The application changes will reduce the number of licensing surveys by a small percentage. Applicants requesting to start home health agencies continue to increase yearly.

AHCA will still investigate complaints of exempt agencies and will continue to conduct the Medicare and Medicaid recertification surveys at most agencies.

AHCA feels that there will not be a negative fiscal impact and all other fiscal impact can be absorbed by utilizing existing resources.

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. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides AHCA the authority to promulgate rules for implementing the completion and collection of volume of data (such as admission data) on renewal application for home health agency licenses.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2005, the Health Care Regulation Committee adopted a strike all amendment sponsored by Representative Grimsley. The Committee Substitute differs from the original bill as filed in that the Committee Substitute:

- Added to the definition of "admission" to include the completion of an agreement that provides home health services.
- Removed the reference to "home health aide" within the definition of a certified nurse assistant.
- Restored current law, the definition for a "companion" or "sitter" to read a person who spends time with or cares for an elderly, handicapped, or convalescent individual.
- Changed the penalty for advertising to the public without being licensed or registered to current law.
- Changed the penalty for failing to cease business operations within 10 working days after receiving notification from AHCA to a first degree misdemeanor instead of a third degree felony provided in the original bill.
- Restores current law to provide restrictions to the listing of services provided, "either directly by the applicant or through contractual arrangements with existing providers," the information on whether

services are provided directly or through contractors is needed to review the financial projections and determine financial ability to operate.

- Removed the requirement in the original bill that a patient has 15 calendar days between the hours of 10am-3pm to retrieve their medical records. The strike all reverts to current law that provides the patient 1 year.
- Provides clarifying language specifying that a certified nursing assistant or home health aide is referred by a nurse registry.
- Strikes “the assessment” and adds “a record of the nurse’s visit”, which will become part of the patients’ record with a nurse registry.

On April 13, 2005, the Criminal Justice Committee adopted one amendment to this bill, making all of the newly created criminal offenses a second degree misdemeanor. The bill was then reported favorably with a committee substitute.