

**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 Health and Human Services Appropriations Committee

BILL: CS/SB 1592

INTRODUCER: Health Regulation Committee and Senator Lynn

SUBJECT: Nurse Registries/Companion-homemaker Organizations

DATE: April 13, 2009 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hankins/Stovall</u>	<u>Wilson</u>	<u>HR</u>	<b>Fav/CS</b>
2.	<u>Kynoch</u>	<u>Peters</u>	<u>HA</u>	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This committee substitute directs the Agency for Health Care Administration (AHCA) to develop a consumer notice form which nurse registries and organizations registered to provide companion or homemaker services would be required to fill out and provide to the patients or clients who contract to use their services. The notice must specify who is responsible for supervising, assigning duties, hiring, firing and discipline, providing equipment and materials, checking references, and paying Social Security taxes for the person providing the services. The patient or client, or the patient's or client's legal representative, must sign the notice no later than the date the contract for health care services is executed. The notice is to be retained by the nurse registry or registered organization for 3 years after termination of the contract.

The AHCA will develop the consumer notice form required by the bill utilizing existing resources and will include consumer notice compliance requirements into the state survey standards for nurse registries. The additional compliance will add an indeterminate amount of time to the completion of surveys.

This bill creates section 400.510, Florida Statutes.

## II. Present Situation:

Home health services and homemaker or companion services might be provided in a person's home or place of residence through a business operating as a nurse registry, homemaker and companion service organization, or home health agency.

Home health services include nursing care; physical, occupational, respiratory, or speech therapy; home health aide services; dietetics and nutrition practice and nutrition counseling; and medical supplies that are prescribed by a physician.<sup>1</sup>

A *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.<sup>2</sup> A *companion/sitter* is a person who spends time with or 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.<sup>3</sup> Homemakers and companions cannot provide hands-on personal care such as bathing, dressing, personal hygiene, ambulation, or the administering of medication to a client.<sup>4</sup>

Level I background screening as provided in ch. 435, F.S., is required for persons referred by nurse registries, persons employed by companion or homemaker service organizations, and for home health agency personnel.<sup>5</sup>

### Nurse Registries

A nurse registry acts as an employment agency between an individual patient and a nurse, nursing assistant, home health aide, companion, or homemaker, to provide services to a patient or client in the patient or client's home or place of residence. The nurse registry contracts with each health care worker—as an independent contractor.<sup>6</sup> Nurse registries are licensed by the AHCA pursuant to s. 400.506, F.S. A nurse registry is not required by law to carry liability insurance.

Pursuant to the AHCA's rules, a nurse registry is required to inform the patient or his or her family or guardian that the nurse or other person being referred to provide the requested service(s) is an independent contractor of the nurse registry.<sup>7</sup> Nurse registries are also required, by rule, to provide instructions as to the responsibility for the payment of self-employment estimated taxes in its contracts with the independent contractors.<sup>8</sup>

A nurse registry may also contract to provide private duty or staffing services to health care facilities such hospitals, nursing homes, assisted living facilities, adult family-care homes, and

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<sup>1</sup> s. 400.462(14), F.S.

<sup>2</sup> s. 400.462(16), F.S.

<sup>3</sup> s. 400.462(7), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> s. 400.512, F.S.

<sup>6</sup> s. 400.462(21), F.S.

<sup>7</sup> Rule 59A-18.011(7)(d), F.A.C.

<sup>8</sup> Rule 59A-18.005(7), F.A.C.

other entities.<sup>9</sup> According to the AHCA, there are 316 licensed nurse registries in Florida as of March 2009.

### **Homemaker and Companion Service Organizations**

Homemaker and companion service organizations are *registered*, not licensed, by the AHCA pursuant to s. 400.509, F.S. The organization is required to obtain the employment or contract history of persons who are employed by or under contract with the organization and who will have contact at any time with patients or clients in their homes. Homemaker and companion service organizations are not required by law to carry liability insurance. According to the AHCA, there are 1,931 registered organizations providing homemaker and companion services in Florida as of March 2009.

### **Home Health Agencies**

Home health agencies are licensed by the AHCA pursuant to s. 400.464, F.S., to provide home health services<sup>10</sup> to a patient in the patient's home or place of residence such as an assisted living facility, adult family care home, nursing home, or hospital. Home health agency personnel are either employed by or under contract with the agency.<sup>11</sup> A home health agency is also authorized to provide staffing services,<sup>12</sup> as well as homemaker and companion services without registering under s. 400.509, F.S. Home health agencies are required by law to maintain malpractice and liability insurance.<sup>13</sup>

### **Role of the AHCA, Including Regulation and Inspection**

The AHCA has no legal authority in state law regarding: the supervision of; assigning duties to; hiring, firing and discipline of; or the providing of equipment and materials to caregivers by nurse registries and organizations registered to provide homemaker and companion services. The regulation of employer payment of Social Security taxes is the role of the Internal Revenue Service, not the AHCA.

Nurse registries receive initial inspections prior to licensing and unannounced periodic inspections from the AHCA to determine compliance with state laws and rules. Homemaker and companion service organizations do not receive inspections; thus, compliance with state law and rules is not known.<sup>14</sup> If complaints are reported to the AHCA alleging a violation of state law and rules under the AHCA's legal authority, its field offices do unannounced on-site surveys.

### **III. Effect of Proposed Changes:**

The committee substitute requires nurse registries and organizations that are registered to provide companion or homemaker services to give notice of certain information to patients or clients who contract for their services. This information must identify:

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<sup>9</sup> s. 400.462(21), F.S.

<sup>10</sup> s. 400.462(12), F.S.

<sup>11</sup> s. 400.462(13), F.S.

<sup>12</sup> s. 400.462(14), F.S.

<sup>13</sup> s. 400.471(3), F.S.

<sup>14</sup> Agency for Health Care Administration 2009 Bill Analysis and Economic Impact Statement for SB 1592.

- The nurse registry or registered organization as the referring entity or employer, joint employer, or leasing employer of the person providing the service; and,
- With respect to the person providing the services, who is responsible for:
  - Daily supervision of the person;
  - Assigning duties to the person;
  - Hiring, firing and disciplining the person;
  - Providing equipment or necessary materials for use by the person;
  - Checking the person's references; and,
  - Withholding the person's social security taxes.

Notice is not required when the person providing the service(s) is temporarily substituting for the patient's or client's regular service worker.

The AHCA is required to develop the consumer notice form. The notice must be signed by the patient or client, or the legal representative of the patient or client, no later than the date the contract is executed. The signed notice must be retained by the nurse registry or registered organization for at least 3 years after the termination of the contract with the patient or client.

The committee substitute provides additional consumer information to patients or clients relating to the patient's or client's caregiver. Such information would clarify the responsibilities of each party as they relate to the caregiver's contract with the patient or client, or with the employing entity. This consumer notice requirement does not apply to a home health agency since it is not required to register with the AHCA to provide homemaker or companion services.

The bill takes effect July 1, 2009.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Nurse registries and registered homemaker and companion organizations may incur some costs to provide the notice to clients.

**C. Government Sector Impact:**

The AHCA is will develop the consumer notice form required by the provision of the bill utilizing existing resources and will include consumer notice compliance requirements into the state survey standards for nurse registries. The additional compliance will add an indeterminate amount of time to the completion of surveys.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

There is no requirement that the patient or client receive a signed copy of the notice.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by the Health Regulation Committee on March 25, 2009:**

The committee substitute authorizes the legal representative of the patient or client to sign the notice, requires that the notice be signed no later than the date that the contract for the health care services is executed, and provides that the notice is not required when the person providing the services is temporarily substituting for the patient's or client's regular service worker. The committee substitute eliminates the requirement that the patient or client receive a copy of the signed notice.

**B. Amendments:**

None.