HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1143 Reduction and Simplification of Health Care Provider Regulation
SPONSOR(S): Health Care Regulation Policy Committee; Hudson
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee	14 Y, 0 N, As CS	Calamas	Calamas
2)	Health Care Appropriations Committee			
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 1143 amends the Health Care Licensing Procedures Act and the various authorizing statutes of entities regulated by the Agency for Health Care Administration (AHCA) to reduce, streamline, and clarify regulations for those providers.

The bill eliminates the Limited Nursing Services (LNS) specialty license types for assisted living facilities (ALFs) to allow a licensed nurse to provide limited nursing services in a standard licensed assisted living facility. The bill replaces monitoring visits currently made to ALFs with specialty licenses with monitoring visits to all ALFs based upon citation of serious violations, and allows a fee to be charged for monitoring visits. The bill modifies AHCA consultation duties related to ALFs, and requires rules be adopted for data submission by ALFs to the Agency related to the numbers of residents receiving mental health or nursing services, resident funding sources and staffing.

The bill precludes collection of Lease Alternative Bond Fund (Fund) payments by certain nursing homes when the Fund exceeds $25 million, based on certain calculations. This could save nursing home providers up to $4.2 million, annually. The bill also expands the ability of nursing homes to provide respite services, and provides criteria for the provision of such services.

The bill amends various licensure provisions, including those related to bankruptcy notifications, licensure renewal notices, billing complaints, accrediting organizations, licensure application document submissions, staffing in geriatric outpatient clinics, medical records, property statements, AHCA inspection staff, litigation notices, and health care clinic licensure exemptions.

The bill repeals obsolete or duplicative provisions in licensing and related statutes, including expired reports and regulations and provisions that exist in other sections of law, and resolves conflicts among and between provisions in the Health Care Licensing Procedures Act and various authorizing statutes for individual provider types. The bill makes various revisions to update terminology and conform current law to prior legislative changes.

The bill has a positive impact on the Agency for Health Care Administration: The bill will save $1.3 million annually in state funds by reducing state administrative costs and Medicaid expenditures. The bill also redirects revenue from certain traffic fines from AHCA to the Brain and Spinal Cord Trust Fund within the Department of Health. (See Fiscal Comments.)

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Health Care Licensing Procedures Act

The Agency for Health Care Administration (AHCA) regulates over 41,000 health care providers under various regulatory programs. Regulated providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act (ss. 112.0455, 440.102, F.S.)
- Birth centers (Ch. 383, F.S.).
- Abortion clinics (Ch. 390, F.S.).
- Crisis stabilization units (Pts. I and IV of Ch. 394, F.S.).
- Short-term residential treatment facilities (Pt. I and IV of Ch. 394, F.S.).
- Residential treatment facilities (Pt. IV of Ch. 394, F.S.).
- Residential treatment centers for children and adolescents (Pt. IV of Ch. 394, F.S.).
- Hospitals (Part I of Ch. 395, F.S.).
- Ambulatory surgical centers (Pt. I of Ch. 395, F.S.).
- Mobile surgical facilities (Pt. I of Ch. 395, F.S.).
- Health care risk managers (Pt. I of Ch. 395, F.S.).
- Nursing homes (Pt. II of Ch. 400, F.S.).
- Assisted living facilities (Pt. I of Ch. 429, F.S.).
- Home health agencies (Pt. III of Ch. 400, F.S.).
- Nurse registries (Pt. III of Ch. 400, F.S.).
- Companion services or homemaker services providers (Pt. III of Ch. 400, F.S.).
- Adult day care centers (Pt. III of Ch. 429, F.S.).
- Hospices (Pt. IV of Ch. 400, F.S.).
- Adult family-care homes (Pt. II of Ch. 429, F.S.).
- Homes for special services (Pt. V of Ch. 400, F.S.).
- Transitional living facilities (Pt. V of Ch. 400, F.S.).
- Prescribed pediatric extended care centers (Pt. VI of Ch. 400, F.S.).
- Home medical equipment providers (Pt. VII of Ch. 400, F.S.).
- Intermediate care facilities for persons with developmental disabilities (Pt. VIII of Ch. 400, F.S.).
- Health care services pools (Pt. IX of Ch. 400, F.S.).
- Health care clinics (Pt. X of Ch. 400, F.S.).

- Clinical laboratories (Pt. I of Ch. 483, F.S.).
- Multiphasic health testing centers (Pt. II of Ch. 483, F.S.).
- Organ, tissue, and eye procurement organizations (Pt. V of Ch. 765, F.S.).

Providers are regulated under individual licensing statutes and the Health Care Licensing Procedures Act (Act) in Part II of Chapter 408, Florida Statutes. The Act provides uniform licensing procedures and standards applicable to most AHCA-regulated entities. The Act contains basic licensing standards for 29 provider types in areas such as licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions, license renewal notices, and bankruptcy and eviction notices.

In addition to the Act, each provider type has an authorizing statute which includes unique provisions for licensure beyond the uniform criteria. Pursuant to s. 408.832, F.S., in the case of conflict between the Act and an individual authorizing statute, the Act prevails. There are several references in authorizing statutes, that conflict with or duplicate provisions in the Act, including references to the classification of deficiencies, penalties for an intentional or negligent act by a provider, provisional licenses, proof of financial ability to operate, inspection requirements and plans of corrections from providers. In 2009, the Legislature passed and the Governor signed into law SB 1986 (Ch. 2009-223 L.O.F), which made changes to part II of Chapter 408 that supersede components of the specific licensing statutes.

House Bill 1143 repeals obsolete or duplicative provisions in licensing and related statutes, including expired reports and regulations and provisions that exist in other sections of law like the Act. The bill also makes changes to the Act to reduce, streamline, or clarify regulations for all providers regulated by AHCA.

The bill changes individual licensing statutes to reflect updates to the uniform standards in the Act. The bill makes corresponding changes to provider licensing statutes to reflect the changes made to the Act to eliminate conflicts and obsolete language.

License Renewal Notices

Section 408.806, F.S., requires AHCA to notify licensees by mail or electronically when it is time to renew their licenses. AHCA mails renewal notices by to over 30,000 providers every two years. While the statute does not specify the manner of mailing notices, AHCA sends them by certified mail to verify receipt by the providers. The cost of certified mail is approximately $55,700 annually. According to AHCA, some certified mail is returned, as providers do not pick it up or the post office is unable to obtain necessary signatures for delivery. AHCA has also encountered situations in which licensees did not timely renew their licenses, and claimed that their lack of receipt of a renewal reminder was a reason for that failure.

The bill clarifies that renewal notices are courtesy reminders only and do not excuse the licensees from the requirement to file timely licensure applications. The revised language gives AHCA clear flexibility to use or not use certified mail to send courtesy renewal reminders.

Classification and Fines for Violations

Section 408.813, F.S., includes criteria for the classification of deficiencies for all providers licensed by AHCA. Some authorizing statutes also contain criteria for the classification of deficiencies, some of which do not match the provisions contained in the Act. The provisions in the Act legally supersede conflicting provisions in the authorizing statutes; however, the dual provisions are confusing, and some conflicts still exist. Additionally, authorizing statutes are inconsistent related to fines for unclassified deficiencies such as failure to maintain insurance or exceeding licensed bed capacity.

The bill modifies the classification of licensure violations related to nursing homes, home health agencies, intermediate care facilities for the developmentally disabled and adult family care homes to refer to the scope and severity in s. 408.813, F.S. Fine amounts for violations are unchanged. For intermediate care facilities for the developmentally disabled, the amount of fines for Class I, II and II violations are unchanged, but a new Class IV is added consistent with s. 408.813 with a fine not to exceed $500. The addition of the Class IV violation creates a lower category for minor violations by those facilities. This resolves conflicting or confusing

differences between the Act and the authorizing statutes, and resolves inconsistencies between these three authorizing statutes.

In addition, the bill establishes uniform sanction authority for unclassified deficiencies of up to $500 per violation. Examples of unclassified deficiencies include failure to maintain insurance and other administrative requirements, exceeding licensed capacity, or violating a moratorium. Without fine authority, AHCA would be required to initiate revocation action for violations against those providers that do not have general fine authority. These violations may not warrant such a severe sanction.

Notice of Bankruptcy and Eviction

Currently, nursing homes are required to notify AHCA of bankruptcy filing pursuant to s. 400.141(1)(r), F.S. However, nursing homes are not required to notify AHCA of eviction, and there is no statutory requirement for other types of facility providers to notify AHCA if served with an eviction notice or bankruptcy. According to AHCA, recently it has been made aware of several eviction and bankruptcy orders affecting regulated facilities. If notice is not received early in the process, finding alternative resident placement can become difficult and create a hardship for clients.

The bill amends s. 408.806, F.S., to require providers' controlling interests to notify AHCA within 10 days after a court action to initiate bankruptcy foreclosure or eviction proceedings. This applies to any such action to which the controlling interest is a petitioner or defendant. According to AHCA, this allows it to monitor the facility to ensure patient protection and safe transfer, if needed. If the property upon which a licensed provider operates is encumbered by a mortgage or is leased, the bill requires the licensee to notify the mortgage holder or landlord that the property will provide services that require licensure and instruct the mortgage holder or landlord to notify AHCA if action is initiated against the licensee, such as eviction.

Licensure Denial and Revocation

An action by AHCA to deny or revoke a license is subject to challenge under the Administrative Procedures Act (Chapter 120). If a licensee challenges the agency action, s. 408.815(2), F.S., allows the license to continue to exist and the provider to continue to operate during the pendency of the case. Once a final order is issued on the denial or revocation, if the original licensure expiration date has passed, there is no valid license and the provider must cease operations immediately. According to AHCA, this can be problematic for residents or clients who must immediately be moved to another facility or find another health care provider.

The bill amends s. 408.815, F.S., to authorize AHCA to extend a license expiration date up to 30 days beyond the final order date in the event of a licensure denial or revocation to allow for orderly transfer of residents or patients.

Billing Complaint Authority

The Act provides authority to review billing complaints across all programs and gives the impression that AHCA can take licensure action regarding billing practices: s. 408.10(2), F.S., requires AHCA to determine whether billing practices are "unreasonable and unfair". However, the Act does not provide specific standards for billing practices which AHCA can use to cite violations and discipline a provider's license, and does not define what activities would be unreasonable and unfair. Several providers' authorizing statutes do include billing standards, including nursing homes and assisted living facilities. However, other authorizing statutes are silent on billing standards.

For calendar year 2009, AHCA received 693 complaints that alleged billing-related issues. Of those, 269 were for providers that have billing standards in their licensure statutes. The remaining 424 were related to billing issues where no regulatory authority existed for billing matters. According to AHCA, when the agency receives a billing complaint regarding one of the providers which does not have statutory billing standards, AHCA reviews the complaint and encourages the parties to work together to resolve the problem, but does not cite or discipline the provider.

The bill repeals AHCA's independent authority related to billing complaints in the Act. When a complaint is received for one of the providers over which AHCA has authority over billing matters, a review for regulatory compliance, possibly resulting in citations and discipline, would still occur.

License Display

Section 408.804, F.S., makes it unlawful to provide or offer services that require licensure without having first obtained a license, and makes licenses valid only for the entities to which they are issued. Licensees are required to conspicuously display licenses for clients to see. The Act law does not currently address falsification or ill-usage of license documents.

The bill makes it a second degree misdemeanor to knowingly alter, deface or falsify a license, punishable by up to 60 days in jail and a fine up to $500. The bill makes it an administrative violation for a licensee to display an altered, defaced or falsified license. Such violations are subject to licensure revocation and a fine of up to $1,000 per day.

Hospital Licensure

Currently, Florida law allows AHCA to consider and use hospital accreditation by certain accrediting organizations for various purposes, including accepting accreditation surveys in lieu of AHCA survey, requiring accreditation for designation as certain specialty hospitals, and setting standards for quality improvement programs. Section 395.002, F.S., defines "accrediting organizations" as the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, and the Accreditation Association for Ambulatory Health Care, Inc.

Complaint investigation procedures for hospitals exist in the hospital authorizing chapter as well as in the Act. Section 395.1046, F.S., provides special procedures for hospital complaints regarding emergency access issues. For example, AHCA must: investigate emergency access complaints even if the complaint is withdrawn; prepare an investigative report; and make a probable cause determination. According to AHCA, the federal process for emergency access complaints dictates that these complaints should not be handled any differently from other types of complaints, thereby creating two separate processes for emergency access complaints, one state and one federal.

The bill broadens the definition of "accrediting organizations" for hospitals and ambulatory surgery centers to include any nationally recognized accrediting organization which has standards comparable to AHCA's licensure standards, as determined by AHCA. This gives AHCA and providers greater flexibility to accept new or improving accrediting organizations, and reconsider existing ones based on current statutory and rule-based standards.

The bill repeals s. 395.1046, F.S., which modifies the procedures for investigations hospital emergency access complaints. Under the bill, AHCA would use existing hospital complaint investigation procedures used for all other types of complaints.

Nursing Home Licensure

An application for nursing home licensure must include the following:

- A signed affidavit disclosing financial or ownership interest of a nursing home controlling interest in the last five years in any health or residential facility which has closed, filed bankruptcy, has a receiver appointed or an injunction placed against it, or been denied, suspended, or revoked by a regulatory agency. This information is also required in s. 400.111, F.S.
- A plan for quality assurance and risk management. This plan is also reviewed during onsite inspections by AHCA.
- The total number of beds including those certified for Medicaid and Medicaid. This information is also required by s. 408.806(1)(d), F.S.

The bill eliminates routine submission of documents at licensure by amending ss. 400.071, 400.111, 400.1183, 400.141, F.S. to substitute the requirement for nursing homes to routinely submit certain documents at the time of licensure with the ability for AHCA to request them if needed.

Geriatric Outpatient Clinics

Under current law, nursing homes may establish a geriatric outpatient clinic as authorized in s. 400.021, F.S., to provide outpatient health care to persons 60 years of age or older. The clinic can be staffed by a registered nurse or a physician's assistant.

The bill expands the health care professionals that may staff a geriatric outpatient clinic in a nursing home by including licensed practical nurses under the direct supervision of registered nurses or advanced registered nurse practitioners.

Records

Nursing home medical records regulations exist under both state licensure, s. 400.141(1)(j), F.S., and federal regulations. Section 400.141(1)(j), F.S., requires licensees to maintain full patient records. AHCA Rule 59A-4.118, F.A.C., also requires nursing homes to employ or contract with a person who is eligible for certification as a Registered Record Administrator or an Accredited Record Technician by the American Health Information Management Association of a graduate of a School of Medical Record Science that is accredited jointly by the Council on Medical Education of the American Medical Association and the American Health Information Management Association. Nursing homes are required to maintain records of all grievances, and to report to the agency, upon licensure renewal, various data regarding those grievances.

The bill specifies the standard for maintaining medical records. According to AHCA, inclusion of this language will enable it to repeal regulation of the credentials of medical records personnel. In addition, the bill removes the requirement that nursing homes report grievance information. The bill retains the requirement for nursing homes to maintain grievance records, and makes them available for AHCA to inspect.

Staffing Ratios

Nursing homes must comply with nursing staff-to-resident staffing ratios. Under s. 400.141(1)(o), F.S., if a nursing home fails to comply with minimum staffing requirements for two consecutive days, the facility must cease new admissions until the staffing ratio has been achieved for six consecutive days. Failure to self-impose this moratorium on admissions results in a Class II deficiency cited by AHCA. All other citations for a Class II deficiency represent current, ongoing non-compliance that AHCA determines has compromised a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being. Use of the Class II deficiency for a failure to cease admissions is an inconsistent use of a "Class II" level compared to all other violations. No nursing homes were cited for this violation in 2009.

The bill modifies the penalty for nursing homes that fail to self impose a moratorium for insufficient staffing to a fine of $1,000 instead of a Class II deficiency.

Do Not Resuscitate Orders

Section 400.142, F.S., requires AHCA to develop rules relating to implementation of Do Not Resuscitate Orders for nursing home residents. According to AHCA, draft rules have been developed but are not final. Criteria for Do Not Resuscitate Orders are found in s. 401.45, F.S.

The bill removes the requirement for AHCA to promulgate rules related to the implementation of Do Not Resuscitate Orders for nursing home residents. The statutory requirements for such orders in s. 401.45 are clear and do not require rule implementation.

Property Statements

Section 400.141, F.S., requires nursing homes to provide quarterly property statements to residents when they hold property or funds for a resident.

The bill maintains the requirement for a quarterly property statement for funds, but amends the requirement for other types of property. Instead of quarterly, nursing homes must provide a property statement upon resident request, and within 7 days of a request.

Lease Alternative Bond Fund

Nursing homes that are leased and choose to participate in the Medicaid program must either post a bond or pay into a Lease Alternative Bond Fund (Fund) annually pursuant to s. 400.179, F.S. Most leased nursing homes choose to pay into the Fund. Of the 674 licensed nursing homes in Florida, 519 are leased and participate in Medicaid. Of those 505 nursing homes pay into the Fund and 14 post a leased surety bond. In 2009, Senate Bill 2602 provided a reprieve from payments for Medicaid leased nursing homes for one year, July 1, 2009 through June 30, 2010, specifying that all nursing facilities licensees operating a leased facility shall not be required to submit the nonrefundable 1 percent lease bond fee or be required to provide proof of lease bond. As of February 26, 2010, the net balance of the Lease Bond Alternative fund is $23,675.779.13.

The bill creates an automatic mechanism to provide relief from payments into the Fund when receipts minus payments for nursing homes overpayments exceed $25 million. This bill protects nursing homes from having to contribute additional funds into the Fund if the balance has been reduced as a result of transfers pursuant to section 215.32, Florida Statutes or deposits to the General Revenue Fund pursuant to section 215.20, Florida Statutes. The fund would be reviewed annually to determine if payments during the next year will be required. This provision can save up to $1,264,448 in annual Medicaid nursing home expenditures and $4.2 million annually for nursing home providers.

Inspections and Surveys

AHCA employs staff to inspect nursing homes, referred to as surveyors. Pursuant to s. 400.275, F.S., newly-hired nursing home surveyors must spend two days in a nursing home as part of basic training in a non-regulatory role. Federal regulations prescribe an extensive training process for nursing home inspection staff. Staff must pass the federal Surveyor Minimum Qualifications Test. Federal regulations prohibit an Agency staff person who formerly worked in a nursing home from inspecting a nursing home within two (2) years of employment with that home; state law requires a five year lapse.

The bill removes the requirement for new AHCA nursing home inspection staff to spend two days in a nursing home as part of basic training and aligns staff requirements with federal regulations. Agency nursing home staff must still be fully qualified under federal requirements for the Surveyor Minimum Qualifications Test.

Litigation Notices

Since 2001, nursing homes have been required by s. 400.147(10), F.S., to report civil notices of intent to litigate (required by s. 400.0233, F.S.) and civil complaints filed with clerks of courts by a resident or representative of a resident. This information has been used to produce the Semi-Annual Report on Nursing Homes required by s. 400.195, F.S. Information is reported in aggregate for all facilities.

The bill eliminates the requirement to report notices of intent to litigate and civil complaints.

Respite Care

Section 400.141(1)(f), F.S., allows nursing homes to provide respite care for people needing short-term or temporary nursing home services. Only nursing homes with standard licensure status with having no Class I or Class II violations in the past two years or having Gold Seal status may provide respite services. AHCA is authorized to promulgate rules for the provision of respite services.

The bill amends s. 400.141, F.S., to expand the ability of nursing homes to provide respite services not exceeding 60 days per year, for individual stays not exceeding 14 days. The bill allows all licensed nursing

homes to provide respite services, without limitations based on prior deficiencies. The bill provides additional criteria for the provision of respite services. For each patient, the nursing home must:

- Have an abbreviated plan of care for each respite patient, covering nutrition, medication, physician orders, nursing assessments and dietary preferences;
- Have a contract that covers the services to be provided;
- Ensure patient release to the proper person; and
- Assume the duties of the patient's primary care giver.

The bill provides that respite patients are exempt from discharge planning requirements, and have the resident rights delineated in s. 400.022, F.S., except those related to transfer, choice of physician, bed reservation policies, and discharge challenges. The bill requires prospective respite patients to provide certain medical information to the nursing home, and entitles the patient to retain his or her personal physician.

Hospice Licensure

In 2009, the Legislature passed and the Governor signed into law SB 1986 (Ch. 2009-223 L.O.F). The new law requires any hospice initial or change of ownership applicant show anticipated provider revenue and expenditures, the basis for financing anticipated cash flow requirements and access to contingency financing, per s. 408.810(8), F.S. Current state law for hospice licensing, s. 400.606(1)(i), F.S., requires that an annual operating budget be submitted, which duplicates the financial information now required in the Act.

The hospice authorizing statutes (ss.400.606-400.609, F.S.) and federal regulations (42 CFR 418.98) require that hospices have inpatient beds for symptom control and pain management and for respite for caregivers. Inpatient beds may be in a hospital, skilled nursing facility or a freestanding inpatient facility operated by a hospice. Section 408.043, F.S., requires that there be a certificate of need for a hospice freestanding facility "primarily engaged in providing inpatient care and related services." This provision is repeated in the Act (s. 400.606(4), F.S.).

The bill removes the requirement for hospice licensure applicants to submit a projected annual operating budget. Since financial projections are already submitted as part of the proof of financial ability to operate as required in the Act, this removes duplicative requirements.

The bill amends both the Act and the hospice authorizing statute related to certificates of need for inpatient hospice facilities. The bill eliminates the modifier "primarily" to provide that any provision of inpatient hospice care, in any facility not already licensed as a health care facility (like a hospital or nursing home), requires a certificate of need. In effect, the bill provides that no exemptions to this requirement exist.

Home Medical Equipment Licensure

Licensure law, s. 400.931(2), F.S., allows a bond be posted as an alternative to submitted proof of financial ability to operate for a home medical equipment provider. In 2009, the Legislature passed and the Governor signed into law SB 1986 (Ch. 2009-223 L.O.F). The new law, s. 408.8065, F.S., requires that financial statements with evidence of funding to cover start up costs, working capital and contingencies be submitted.

The bill deletes the provisions of s. 400.931, F.S., related to the ability to submit a bond as an alternative to submitting proof of financial ability to operate. Due to the 2009 legislative changes, financial oversight is now addressed in the Act.

Health Care Clinic Licensure

Licensure for health care clinics includes mobile clinics and portable equipment providers. Exemptions from licensure exist for clinics that are wholly owned, directly or indirectly, by a publically traded corporations, among other exemptions.

Licensure law, s. 400.991(4), F.S., allows a bond be posted as an alternative to submitted proof of financial ability to operate for a home medical equipment provider. In 2009, the Legislature passed and the Governor

signed into law SB 1986 (Ch. 2009-223 L.O.F). The new law, s. 408.8065, F.S., requires that financial statements with evidence of funding to cover start up costs, working capital and contingencies be submitted in.

The bill provides that portable service providers, such as mobile ultrasound providers, are subject to health care clinic licensure even though they do not deliver care at the clinic's location. The bill also expands an existing exemption from health care clinic licensure for clinics that are wholly owned, directly or indirectly, by a publically traded corporation to include pediatric cardiology or perinatology clinics.

Assisted Living Facility Licensure

Under current law, a licensed assisted living facility (ALF) that wishes to provide certain nursing services must also have a limited nursing services (LNS) or extended congregate care (ECC) specialty license to provide certain nursing services. These specialty licenses allow facilities to provide a variety of additional services beyond those allowed in a standard licensed ALF.

With a LNS specialty license,, a facility may provide nursing assessment, care and application of routine dressings, care of casts, braces and splints, administration and regulation of portable oxygen, catheter, colostomy and ileostomy care and maintenance and the application of cold or heat treatments, passive range of motion exercises, and ear and eye irrigations.

Facilities with the ECC specialty license may provide additional services, including total help with activities of daily living (bathing, dressing, toileting), dietary management including special diets and nutrition monitoring, administering medication and prescribed treatments, rehabilitative services, and escort to health services. Additionally, licensed nursing staff in an ECC program may provide any nursing service permitted within the scope of their license consistent with residency requirements and the facility's written policies and procedures. A facility is required to pay an additional licensure fee for the LNS and ECC specialty license.

Under current law, LNS facilities must be monitored at least twice a year and ECC facilities must be monitored quarterly. Additional fees required for these programs cover the costs of monitoring visits and the additional oversight during routine inspections and licensure due to the higher acuity of residents and services. The 2010 proposed license fees will be adjusted by a 2.72 percent increase in the consumer price index pursuant to s. 408.805, F.S., effective August 2010, as follows:

Fee Type	Current Fees	Fees August 2010
Standard ALF	**Standard ALF**	**Standard ALF**
Application Fee	$ 356	$366
Per Bed Fee	$ 59	$61
Not to exceed	$13,087	$13,443
ECC ALF	**ECC ALF**	**ECC ALF**
Application Fee	$ 501	$515
Per Bed Fee	$10	$10
LNS ALF	**LNS ALF**	**LNS ALF**
Application Fee	$ 296	$304
Per Bed Fee	$10	$10

As of February 2010, there are a total of 2,853 ALFs with standard licenses, with a total of 81,038 beds. Of the 2,853 ALFs in Florida, 995 have a LNS specialty license and 313 have an ECC specialty license. Of those 995 ALFs, 77 have both a LNS and an ECC license.

ALFs are not currently required to submit resident population data to AHCA. However, there is a requirement to submit disaster/emergency information electronically via AHCA's Emergency Status System (ESS). Submission of ESS data was a result of SB 1986 (Ch. 2009-223 L.O.F), and is being required at the time of licensure renewal. Currently, 42.1 percent (1197) of ALFs are currently enrolled in this system.

Section 429.23, F.S., requires each ALF to submit a monthly report on civil liability claims filed against the facility, and provides that the reports are not discoverable on civil or administrative actions.

Section 429. 35, F.S., requires AHCA to forward the results of biennial licensure surveys to various entities, including a local public library, the local ombudsman council, and the district Adult Services and Mental Health Program Office.

The bill eliminates the Limited Nursing Services specialty license for ALFs and allows a licensed nurse to provide limited nursing services in a standard licensed ALF without additional licensure. The bill increases ALF licensure fees to compensate for the loss of LNS licensure fees and maintain the licensure program. The increase in licensure fees for all ALFs may offset the loss of revenue to AHCA for the elimination of the LNS specialty license and, thus, the specialty license fee. The bill authorizes $356 for a standard license fee, $67.50 per private pay bed and $18,500 for a total fee cap. The bill repeals the requirement to monitor extended congregate care facilities, and replaces it with a requirement to monitor based upon citation of serious violations (Class I or Class II) in any ALF. The bill allows AHCA to charge a fee for monitoring visits.

The bill modifies AHCA's consultation duties, and requires AHCA to adopt rules for data submission by ALFs to AHCA related to numbers of residents receiving mental health or nursing services, resident funding sources and staffing. The bill requires facilities to electronically submit resident population data to AHCA on a semi-annual basis. Licensees will be required to report ALF resident information not currently required and allows DOEA, in consultation with AHCA, to adopt rules. According to AHCA, this resident information will be useful for health planning and regulatory purposes.

The bill also eliminates the requirement that ALFs report civil liability claims to AHCA, and allows AHCA to provide biennial survey results to the public electronically or via the AHCA website.

Multi-Phasic Health Testing Centers

Multi-phasic health testing centers (centers) are facilities which take human specimens for delivery to clinical laboratories for testing, and which may perform other basic human measurement functions. Centers are licensed and regulated under Part II of Chapter 483, Florida Statutes. Section 483.294, F.S., requires AHCA to inspect centers at least annually. The bill amends the inspection schedule, requiring AHCA to inspect centers biennially.

Brain and Spinal Cord Injury Trust Fund

Under current law, specified traffic fines may be used to provide an enhanced Medicaid rate to nursing homes that serve clients with brain and spinal cord injuries. According to AHCA, funds collected from these fines thus far have not been sufficient to support a Medicaid nursing home supplemental rate for an estimated 100 adult ventilator-dependent patients ($255.80 per day). As of July 2009, the Department of Revenue should have transferred a total of $39,294 to AHCA since May 2008.

The bill redirects the revenue to the Brain and Spinal Cord Injury Trust Fund within the Department of Health, to be used for Medicaid recipients who have sustained a spinal cord injury and who are technologically and respiratory dependent.

Pilot Projects

The Medicaid "Up-or-Out" Quality of Care Contract Management Program in s. 400.148, F.S., was created as a pilot program in 2001 to improve care in poor performing nursing homes and assisted living facilities by assigning trained medical personnel to facilities in select counties similar to Medicare models for managing the medical and supportive-care needs of long-term nursing home residents. The pilot was subject to appropriation; however, an appropriation was not allocated to this program and it was never implemented. According to AHCA, The criteria specified to identify poor performing facilities has been replaced by more comprehensive information for consumers to make informed choices for care.

The bill repeals the Medicaid Up or Out Pilot Quality of Care Contract Management Program.

Reports

The semi-annual report on nursing homes in s. 400.195, F.S., was provided from December 2002 through June 2005 as a tool to provide information about litigation in Florida nursing homes. The report included demographic and regulatory information about nursing homes in Florida and aggregate numbers of notices of intent to litigate and civil complaints filed with the clerks of courts against Florida nursing homes. The reporting requirement ended June 2005 by law. The statutory obligation to publish this report has been met and by law expired on June 30, 2005.

The Consumer Directed Care Plus (CDC+) report was created as part of the new program, in s. 409.221(4)(k), F.S. for AHCA, Department of Elder Affairs, and Agency for Persons with Disabilities to provide an annual update of the review of the CDC program and recommendations for improvement. In March 2008, the CDC program was approved to be under the 1915(j) self directed option as a Medicaid state plan amendment instead of an 1115 Research and Demonstrative waiver. The 1915(j) state plan amendment requires annual and three (3) year comprehensive reporting to the federal Centers for Medicare and Medicaid Services (CMS). The report to CMS communicates current status of the CDC program, data on CDC enrollment, demographics, consumer satisfaction and cost effectiveness. This federal report is required by CMS to be available for public review.

The Assisted Living Facility Extended Congregate Care Report in s. 429.07, F.S., is produced by the Department of Elder Affairs. This report requires an annual description of assisted living facilities with a special license of Extended Congregate Care including the number of beds, resident characteristics, services, availability, deficiencies, admission sources, and recommendations for changes to the ECC license. The requirement to publish this report was created when the ECC licensure type was implemented to monitor effectiveness. ECC facilities must report information to the Department of Elder Affairs for this report. According to AHCA, the need for this report has diminished.

The bill repeals these three report requirements.

Statutory Revisions

The bill updates the name of the Statewide Advocacy Council, formerly known as The Human Rights Advocacy Committee, The Joint Commission, formerly known as the Joint Commission of the Accreditation of Healthcare Organizations, and the Commission on Accreditation on Rehabilitation Facilities, formerly known as CARF-the Rehabilitation Accreditation Commission.

The bill deletes definitions for and references to private review agents and utilization review in s. 395.002, F.S., to conform to repeals made in 2009 (SB 1986, ch. 2009-223 L.O.F.). The bill repeals unused or unnecessary definitions, including definitions for “department” and “agency”.

The bill makes technical corrections and repeals requested by the Division of Statutory Revision, such as repealing obsolete dates, amending cross-references, and updating the reference to an obsolete rule.

B. SECTION DIRECTORY:

Section 1: Amends s. 112.0455, F.S., relating to the Drug-Free Workplace Act.
Section 2: Amends s. 154.11, F.S., relating to powers of the board of trustees.
Section 3: Amends s. 318.21, F.S., relating to the disposition of civil penalties by county courts.
Section 4: Repeals s. 383.325, F.S., relating to inspection reports.
Section 5: Amends s. 394.741, F.S., relating to accreditation requirements for providers of behavioral health care services.
Section 6: Amends s. 395.002, F.S., relating to accrediting organizations and specialty hospitals.
Section 7: Amends s. 395.003, F.S., relating to licensure; denial, suspension, and revocation.
Section 8: Amends s. 395.0193, F.S., relating to licensed facilities; peer review; disciplinary powers; agency or partnership with physicians.
Section 9: Amends s. 395.1023, F.S., relating to child abuse and neglect cases.
Section 10: Amends s. 395.1041, F.S., relating to access to emergency services and care.
Section 11: Repeals s. 395.1046, F.S., relating to complaint investigation procedures.

Section 12: Amends s. 395.1055, F.S., relating to rules and enforcement.
Section 13: Amends s. 395.10972, F.S., relating to the Health Care Risk Manager Advisory Council.
Section 14: Amends s. 395.2050, F.S., relating to routine inquiry for organ and tissue donation, certification for procurement activities and death records review.
Section 15: Amends s. 395.3036, F.S., relating to confidentiality of records and meetings of corporations that lease public hospitals or other public health care facilities.
Section 16: Repeals s. 395.3037, F.S., relating to definitions of "Department" and "Agency".
Section 17: Amends s. 395.3038, F.S., relating to state-listed primary stroke centers and comprehensive stroke centers, and the notification of hospitals.
Section 18: Amends s. 395.602, F.S., relating to rural hospitals.
Section 19: Amends s. 400.021, F.S., relating to geriatric outpatient clinics.
Section 20: Amends s. 400.063, F.S., relating to resident protection.
Section 21: Amends s. 400.071, F.S., relating to applications for licensure.
Section 22: Amends s. 400.0712, F.S., relating to applications for inactive licenses.
Section 23: Amends s. 400.111, F.S., relating to disclosure of controlling interest.
Section 24: Amends s. 400.1183, F.S., relating to resident grievance procedures.
Section 25: Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.
Section 26: Amends s. 400.142, F.S., relating to emergency medication kits and orders not to resuscitate.
Section 27: Amends s. 400.147, F.S., relating to internal risk management and the quality assurance program.
Section 28: Repeals s. 400.148, F.S., relating to the Medicaid "Up-or-Out" quality of care contract management program.
Section 29: Amends s. 400.162, F.S., relating to property and personal affairs of residents.
Section 30: Amends s. 400.179, F.S., relating to liability for Medicaid underpayments and overpayments.
Section 31: Amends s. 400.19, F.S., relating to right of entry and inspection.
Section 32: Repeals s. 400.195, F.S., relating to agency reporting requirements.
Section 33: Amends s. 400.23, F.S., relating to rules, evaluation and deficiencies and licensure status.
Section 34: Amends s. 400.275, F.S., relating to agency duties.
Section 35: Amends s. 400.484, F.S., relating to right of inspection, violations and fines.
Section 36: Amends s. 400.606, F.S., relating to license application, renewal, conditional license or permits and certificates of need.
Section 37: Amends s. 400.607, F.S., relating to denial, suspension and revocation of a license; emergency actions and imposition of administrative fines.
Section 38: Amends s. 400.925, F.S., relating to accrediting organizations.
Section 39: Amends s. 400.931, F.S., relating to application for licensure.
Section 40: Amends s. 400.932, F.S., relating to administrative penalties.
Section 41: Amends s. 400.967, F.S., relating to rules and classification of violations.
Section 42: Amends s. 400.9905, F.S., relating to clinics and portable health service or equipment providers.
Section 43: Amends s. 400.991, F.S., relating to License requirements, background screenings and prohibitions.
Section 44: Amends s. 400.9935, F.S., relating to clinic responsibilities.
Section 45: Amends s. 408.034, F.S., relating to agency duties and responsibilities.
Section 46: Amends s. 408.036, F.S., relating to projects subject to review.
Section 47: Amends s. 408.043, F.S., relating to special provisions.
Section 48: Amends s. 408.05, F.S., relating to the Florida Center for Health Information and Policy Analysis.
Section 49: Amends s. 408.061, F.S., relating to data collection.
Section 50: Amends s. 408.10, F.S., relating to consumer complaints.
Section 51: Amends s. 408.802, F.S., relating to applicability.
Section 52: Amends s. 408.804, F.S., relating to displaying of a license.
Section 53: Amends s. 408.806, F.S., relating to the license application process.
Section 54: Amends s. 408.810, F.S., relating to minimum licensure requirements.
Section 55: Amends s. 408.813, F.S., relating to administrative fines and violations.

Section 56: Amends s. 408.815, F.S., relating to license or application denial and revocation.
Section 57: Amends s. 409.221, F.S., relating to the consumer-directed care program.
Section 58: Amends s. 429.07, F.S., relating to license requirements, fees and inspections.
Section 59: Amends s. 429.11, F.S., relating to initial applications for licensure.
Section 60: Amends s. 429.12, F.S., relating to the sale or transfer of ownership of a facility.
Section 61: Amends s. 429.14, F.S., relating to administrative penalties.
Section 62: Amends s. 429.17, F.S., relating to license expiration, renewal and conditional licenses.
Section 63: Amends s. 429.19, F.S., relating to violations and the imposition of administrative fines.
Section 64: Amends s. 429.23, F.S., relating to the internal risk management and quality assurance program.
Section 65: Amends s. 429.255, F.S., relating to the use of personnel and emergency care.
Section 66: Amends s. 429.28, F.S., relating to the resident bill of rights.
Section 67: Amends s. 429.35, F.S., relating to the maintenance of records.
Section 68: Amends s. 429.41, F.S., relating to rules establishing standards.
Section 69: Amends s. 429.53, F.S., relating to consultation by the agency.
Section 70: Amends s. 429.54, F.S., relating to the collection of information.
Section 71: Amends s. 429.71, F.S., relating to the classification of violations.
Section 72: Amends s. 429.911, F.S., relating to the denial, suspension, or revocation of a license.
Section 73: Amends s. 429.915, F.S., relating to conditional licensure.
Section 74: Amends s. 394.4787, F.S., relating to specialty psychiatric hospitals.
Section 75: Amends s. 400.0239, F.S., relating to the Quality of Long-Term Care Facility Improvement Trust Fund.
Section 76: Amends s. 408.07, F.S., relating to rural hospitals.
Section 77: Amends s. 430.80, F.S., relating to the implementation of a teaching nursing home pilot project.
Section 78: Amends s. 440.13, F.S., relating to medical services and supplies.
Section 79: Amends s. 483.294, F.S., relating to the inspection of centers.
Section 80: Amends s. 627.645, F.S., relating to the restriction of denied health insurance claims.
Section 81: Amends s. 627.668, F.S., relating to optional coverage for mental and nervous disorders.
Section 82: Amends s. 627.669, F.S., relating to optional coverage requirement for substance abuse impaired persons.
Section 83: Amends s. 627.736, F.S., relating to required personal injury protection benefits.
Section 84: Amends s. 641.495, F.S., relating to requirements for issuance and maintenance of certificate.
Section 85: Amends s. 651.118, F.S., relating to the Agency for Health Care Administration
Section 86: Amends s. 766.1015, F.S., relating to civil immunity for members of or consultants to certain boards, committees, or other entities.
Section 87: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will save nursing home providers up to $4.2 million annually by providing relief from lease bond fund requirements if adequate fund receipts exist.

Assisted living facility provider fees will be increased to offset the elimination of the Limited Nursing Services licensure fee. (See Fiscal Comments.)

D. FISCAL COMMENTS:

AHCA estimates that the bill will save $1.3 million annually in state funds by reducing state administrative costs and Medicaid expenditures. The bill will save an estimated $55,700 annually in certified mail costs for license renewal notices.

Nursing Home Lease Bond Fund

The bill will save up to $1,264,448 in annual Medicaid expenditures for nursing home lease bond payments. Nursing homes include the costs of the lease bond payments as allowable costs in their cost reports, which impact Medicaid expenditures.

The bill triggers collection of the lease bond fund from nursing homes if the fund is reduced to reimburse Medicaid overpayments, but not if the fund is reduced for other reasons such as a legislative sweep pursuant to s. 215.32, F.S., or reduced from deposits to General Revenue pursuant to s. 215.20, F.S. According to AHCA, if the lease bond fund is reduced for non-overpayment recoupment reasons, Medicaid could be at risk if a leased nursing home goes out of business or is in significant financial hardship and is unable to repay overpayments. However, to date, AHCA has only expended $3,563,200 from the fund for nursing home overpayments.

Assisted Living Facility Limited Nursing Specialty License

Adjustments in assisted living facility fees have a neutral impact on AHCA as fees are adjusted to off-set losses of revenues from the elimination of the Limited Nursing Services license. Based on the number of LNS specialty licenses in February 2010 (995), the LNS specialty license generates approximately $554,000 in revenues biennially.

$296 per license plus $10 per bed = $553,350 ($294,520 + $258,830).

The additional fee increase in the bill will offset these losses:

$553,350 divided by 65,298 beds (81,038 total beds less 15,740 OSS beds, which are exempt from the bed fee) = $8.47 per bed

The current fee is $59 per bed. The bill will cost licensed ALFs an additional $8.47 per bed every two years upon license renewal, for a total bed fee cost of $67.47. These figures reflect current fees, and do not take into account the consumer price index adjustments pursuant to s. 408.805, F.S. which will take effect August, 2010.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Health Regulation Policy Committee adopted seven amendments. The amendments:

- Expand the ability of nursing homes to provide respite services, and provide criteria for the provision of such services;
- Update the name of the Commission on Accreditation on Rehabilitation Facilities (formerly known as CARF-the Rehabilitation Accreditation Commission);
- Removes current provisions related bankruptcy reporting which conflicts with amendments made by the bill;
- Correct a drafting error to avoid conflict with existing laws which dictate fine amounts;
- Reduce the time for an extended license provided by the bill from 60 days to 30 days;
- Restore provisions deleted by the bill which exempt facilities from a fine for submitting a license renewal application after the deadline if the canceled postmark is dated timely.
- Conform a cross-reference.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.