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HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 1375
RELATING TO: Home and Medical Equipment Providers
SPONSOR(S): Representative Richardson
TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH REGULATION YEAS 10 NAYS 0
 - (2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill eliminates the regulation of providers of certain types of assistive technology devices by the Agency for Health Care Administration (AHCA). These assistive technology products include: voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by persons with quadriplegia, motor vehicle adaptive transportation aids, and devices that enable persons with severe speech disabilities to in effect speak.

According to AHCA, there is no evidence that these providers need to be regulated regarding the products and services that they supply. None of the providers that supply these products have had reports of providing unsatisfactory products and services to consumers. These assistive technology products are sold by non-health care providers and do not fit the definition of home medical equipment.

The Agency for Health Care Administration will lose \$5,600 in FY 2002-2003 and \$40,600 in FY 2003-2004, however, they will not have expenses related to licensing and inspecting these businesses.

On February 21, 2002, the Committee on Health Regulation adopted the bill with 2 amendments that are traveling with the bill. Please see VI. Amendments and Committee Substitutes Changes section for details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

According to AHCA, during the 1999 session, section 400.925, Florida Statutes, was created establishing the home medical equipment licensing program. A Grand Jury investigation found fraudulent practices in the home medical equipment industry specifically related to Medicare and Medicaid and recommended a licensing program be established.

Also during the 1999 session, an amendment was added to the "lemon law" in Chapter 427, Florida Statutes, to require the Department of Agriculture and Consumer Services (DACS) to register assistive technology device dealers. The term "assistive technology device" was defined to include some of the same equipment that was to be licensed by the Agency as home medical equipment. For example, the home medical equipment program would license providers that sold durable medical equipment such as wheelchairs, scooters, personal transfer systems and specialty beds, but the home medical equipment program would not be licensing providers that sold assistive technology products such as voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices, and motor vehicle adaptive transportation aids.

The Florida Association of Medical Equipment Services that represents the home medical equipment industry notified legislators and Department of Agriculture and Consumer Services (DACS) when they found out they had to be regulated by two state agencies. They requested not to have to register with DACS, as they had worked with the Agency for Health Care Administration and the Attorney General's Office to create the home medical equipment licensing bill. The assistive technology registration fee at DACS was \$300 per year. The home medical equipment license requires a \$300 license fee and a \$400 inspection fee for a 2-year license.

The Agency for Health Care Administration, DACS, legislative committee staff and legislators met and worked on eliminating the duplication prior to and during the 2000 session but no amendments were passed. DACS was in agreement that its registration program should be eliminated and the Agency for Health Care Administration licensing program be continued.

During the 2001 session, an amendment was passed as part of CS/CS/SB 784 to eliminate the assistive technology device registration program from DACS. A sentence was added to the definition of home medical equipment in section 400.925, Florida Statutes, to state that home medical equipment includes assistive technology devices, specifying the exact types of products

and equipment that had been listed in the assistive technology device definition in section 427.802(4), F.S. The Agency for Health Care Administration licensed providers that sold the equipment being reimbursed as durable medical equipment by Medicaid and Medicare, but the Agency for Health Care Administration did not license providers that sold assistive technology that was not reimbursable by Medicaid and Medicare.

The Agency for Health Care Administration expressed concerns about 6 types of devices that were being added with this amendment during the 2001 session. Voice-synthesized computer modules, optical scanners, talking software, and braille printers are computer products and accessories and are sold by computer businesses such as Best Buy or Comp USA to the general public. Motor vehicle adaptive transportation aids are not home medical equipment. Environmental control devices are generally sold by businesses that do not provide home medical equipment, such as Lowe's and Home Depot. The Agency for Health Care Administration was requested to take these additional devices as part of the home medical equipment licensing program so that the DACS registration could be eliminated.

This summer, a small business that provides customized computers and software for visually impaired persons received an application for a home medical equipment license from the Agency for Health Care Administration. The owner called the Agency for Health Care Administration, his legislator, the Division of Blind Services and the Tallahassee Democrat newspaper to object to the new licensing requirement since he did not provide home medical equipment, did not see why he needed to be licensed, and could not afford the fees and surety bond required in law. The Division of Blind Services talked with the Agency for Health Care Administration and agreed with the owner's concerns. The Division of Blind Services has not had any problems with this type of business, provides sufficient oversight regarding the products that are provided to its clients, and believes there is no need to license this type of provider.

Some other businesses providing the software, scanners and printers for the visually impaired also contacted their legislators to object to the new licensing requirements. Members contacted the Division of Blind Services who drafted an amendment with the Agency for Health Care Administration's input, striking most of the reference to the assistive technology device products that were lifted out of the assistive technology device definition in s. 427.802(4), F.S., and placed in the home medical equipment definition.

Motor vehicle adaptive transportation aids, such as hand controls to operate a vehicle's acceleration, cannot be considered home medical equipment. The National Mobility Equipment Dealers Association (NMEDA), that represents businesses that install motor vehicle transportation aids, has expressed concerns about the necessity for licensing these businesses. NMEDA certifies dealers that install adaptive transportation aids into vehicles. NMEDA has an arbitration committee that is advertised and available to consumers that have concerns about products and services provided to them by providers that modify vehicles. There have been scant concerns reported to the arbitration committee; so NMEDA believes regulation by a health care department is not needed. Also, NMEDA works closely with the National Highway Traffic Safety Association (NHTSA); the federal program that regulates providers that install adaptive transportation aids into vehicles. All providers that install adaptive transportation aids into vehicles are required to register with NHTSA and NHTSA will investigate reported complaints.

C. EFFECT OF PROPOSED CHANGES:

The changes eliminate the regulation of particular assistive technology devices by AHCA. According to AHCA, the bill also reduces government regulation in areas where there has been no proven need for regulation. Providers that sell optical scanners, talking software, braille printers, environmental control devices, and motor vehicle adaptive transportation aids cannot enroll in the

Medicare and Medicaid durable medical equipment programs, so, there cannot be any fraudulent activity committed against these health care programs.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection (8) of section 400.925, F.S., to remove the following assistive technology products from the list of home health equipment that is regulated by AHCA: voice synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by person with quadriplegia, motor vehicle adaptive transportation aids, and devices that enable persons with severe speech disabilities to in effect speak.

Section 2. Provides an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the AHCA	Amount	Amount
	Year 1	Year 2
	<u>(FY 02-03)</u>	<u>(FY 03-04)</u>
<u>Health Care Trust Fund</u>		
Licenses (\$300 per license x 8 licenses)	\$(2,400)	\$(17,400)
Fees (\$400 per survey x 8 surveys)	<u>\$(3,200)</u>	<u>\$(23,200)</u>
Total Recurring Revenues	\$(5,600)	\$(40,600)

FISCAL IMPACT ON AGENCY FOR HEALTH CARE ADMINISTRATION / FUNDS:

According to the agency, the cost of a 2-year license is \$300 and the cost of the survey that is required every 2 years is \$400 for a total of \$700 per provider to be paid every 2 years. For 2001-2002, the Agency estimated that 50 assistive technology providers would pay licensure and survey fees. Because this is a program where providers are licensed every 2 years, the Agency estimates that 8 new providers would pay licensure and survey fees for fiscal year 2002-2003 (8 X \$700 = \$5,600). In fiscal year 2003-2004, the Agency estimates that the original 50 providers and 8 new providers would pay licensing and survey fees for a total of 58 providers (58 X \$700 = \$40,600). Thus, the Agency would lose estimated licensing and survey fees of \$5,600 for 2002-2003 and \$40,600 for 2003-2004. Since the enabling legislation provided no additional positions, there are no positions reduced.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will remove businesses that sell the devices from the definition of home medical equipment, therefore, they will no longer be subject to licensing or survey fees.

D. FISCAL COMMENTS:

This bill will reduce revenue collected from fees for licensure. Although the agency points out that this requirement never appropriated a FTE, the expenditure for staff time will be reduced.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide any new rulemaking authority.

C. OTHER COMMENTS:

The agency recommends that the wording "but is not limited to" in Section 1, should remain in the definition of home medical equipment because it should not be misconstrued that home medical equipment includes only the equipment listed by name in the definition of home medical equipment.

The agency also recommends that the assistive technology item listed in the current home medical equipment definition as "devices that enable persons with severe speech disabilities to in effect speak", in Section 1, should be struck as proposed because this language implies numerous types of speech devices and not all speech devices are covered by Medicaid and Medicare.

Additionally, the agency recommends changing the effective date to "upon becoming law," thereby, eliminating the need for providers of certain devices to be licensed until July 1, 2001.

The Department of Education, Division of Blind Services notes that the current law could put several small businesses, which are often owned by people with disabilities, out of business.

The Division of Blind Services views licensure regulation as being unnecessary based upon its knowledge of the blind services providers. The interested groups affected are as follows: (1) Florida Association of Medical Equipment Suppliers that does not consider these types of assistive technology providers as being durable medical equipment providers; (2) Florida Alliance for Assistive Services and Technology, Inc. (FAAST), the interest group that believes assistive technology products should be included in the home medical equipment program although they admit assistive technology is not home medical equipment; (3) the National Mobility Equipment Dealer Association (NMEDA) that certifies dealers that install adaptive transportation aids into vehicles. NMEDA works closely with the National Highway Traffic Safety Association (NHTSA); the federal program that regulates providers that install adaptive transportation aids into vehicles. All providers that install adaptive transportation aids into vehicles are required to register with NHTSA, and NHTSA will investigate reported complaints.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2002, the Committee on Health Regulation adopted the bill with 2 amendments that are traveling with the bill.

Amendment 1- Reinserts “but is not limited to” to allow other home need equipment to be covered.

Amendment 2- Changes the effective date to “upon becoming law.”

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

Ashley Robinson

Staff Director:

Lucretia Shaw Collins

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Ashley Robinson

Council Director:

David De La Paz