

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 664

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Health Care

DATE: March 17, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AHS</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises Part IV of chapter 400, F.S., which governs the regulation of businesses that provide home health care. The registration of homemaker or companion services by the Agency for Health Care Administration (AHCA) is repealed and the licensing of personal care organizations is created. A personal care organization is defined as a business licensed to provide personal care, homemaker and companion services by employed caregivers.

This bill also includes amendments to the home health agency and nurse registry statutes, such as the elimination of monthly nurse visits to patients receiving home health aide or certified nursing assistant (CNA) services from nurse registries unless approved by the patient, allowing advanced registered nurse practitioners and physician assistants to give orders for skilled care as is permitted in other health care settings, and changing the license period from one to two years. Licensing fees are increased in accordance with the two-year licensure period for nurse registries. Penalties are increased for operating an unlicensed home health agency, nurse registry or personal care organization that should provide greater authority to AHCA and state attorneys to limit such activity.

This bill amends ss. 400.461, 400.462, 400.464, 400.471, 400.487, 400.491, 400.494, 400.495, 400.497, 400.506, 400.512, and 400.515, F.S.

The bill creates s. 400.5095, F.S., and one undesignated section of law.

The bill repeals s. 400.509, F.S.

II. Present Situation:

Home Health Agencies

Part IV of chapter 400, F.S., governs home health agencies, which are defined in s. 400.462(8), F.S., as organizations that provide home health services and staffing services. Home health agencies provide nursing care; physical, speech, occupational, respiratory and IV therapy; home health aide services; homemaker and companion services; home medical equipment; nutritional guidance; and medical social services in the patient's home or place of residence.

There are 1,176 licensed home health agencies in Florida as of January 26, 2004. In the first nine months of 2003, 260 applications were received for new home health agencies, more than double the number received in calendar year 2000. The Agency for Health Care Administration reports that telephone inquiries are received daily from persons interested in starting new home health agencies. Licenses are issued for a one-year period. The workload for AHCA has increased but the number of personnel has not.

The requirements for applications for an initial license are specified in the statutes and include proof of financial ability to operate with projected income and expense statements. The current law in s. 400.471(3), F.S., only requires that a certified public accountant (CPA) sign the financial statements submitted. According to AHCA, the CPA often signs with disclaimers that he did not complete the statements. The biggest problem agencies have in getting their applications approved is errors and incorrect assumptions made in these documents.

Insurance is also a requirement for licensure. Section 400.471(5), F.S., specifies that proof of both liability and malpractice insurance, in an amount not less than \$250,000 per claim be submitted.

Section 400.487(2), F.S., requires that treatment orders be signed by the attending physician of a patient who is to receive skilled care within 30 days after the start of care. Most orders are received by telephone from the physician's office and home health agencies report difficulty in obtaining signed orders from physicians within 30 days. Medicare home health agency regulations and policy at 42 CFR Part 484 and the Medicare Home Health Agency Manual (CMS Publication 11) do not have a specific time frame and only require that physicians' orders be signed prior to billing for services.

Nurse Registries

Nurse registries arrange for nurses, CNAs, home health aides, homemakers, or companions to provide services to patients in their homes. There were 178 licensed nurse registries in Florida as of January 26, 2004. A nurse registry is a business that offers contracts for registered nurses, licensed practical nurses, home health aides, CNAs, homemakers, and companions. These persons work as independent contractors and provide services to patients in their homes or private duty and staffing services in health care facilities. Licenses are issued for a one-year period.

Persons who receive care from a home health aide or a 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 as required in section 400.506(10), F.S. The home health agency statutes do not require this same amount of supervision for similar care.

Homemaker and Companion Services

Companies providing only homemaker and companion services must be registered with AHCA. Services include housekeeping, providing meals, shopping, and trips outside the home. These services can also be offered by a home health agency, nurse registry, or hospice. The Agency for Health Care Administration currently registers non-health care businesses that provide homemaker and companion services for a fee of \$25 per year as required in s. 400.509, F.S. Homemaker and companion services are defined in s. 400.462, F.S., as household chores, shopping assistance, accompanying persons on outings and preparing meals. Homemakers and companions are prohibited from providing any hands-on personal care in s. 400.462(5) and (12), F.S. The services they provide, such as housekeeping and shopping, are not regulated by the state.

There were 716 businesses registered to provide homemaker and companion services as of January 26, 2004. The Agency for Health Care Administration has no authority to inspect the businesses prior to registration or to survey them once they are registered. The Agency for Health Care Administration may investigate complaints but there are no standards or requirements to be met in law other than background screening. Thus, if complaints are confirmed, there is no authority to fine or take administrative action. Confusion exists with the public who believe that AHCA regulates these services when it has no legal authority to do so.

The Agency for Health Care Administration received 14 complaints of homemaker and companion agencies operating outside the scope of their registration from July 1, 2002 to June 30, 2003. However, there is no requirement for homemaker and companion agencies to give AHCA's toll-free complaint call center phone number to clients. Homemaker and companion services often provide live-in help and have been asked by clients to provide more assistance than the statutes currently allow. The Agency for Health Care Administration reports that homemaker and companion service chains and other businesses have sought to have personal care added to the scope of service that their businesses can provide. "Personal care" is defined in s. 400.462(18) F.S., as "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." Personal care is provided by home health aides and certified nursing assistants as required in s. 400.462, F.S. Current law requires businesses that provide personal care to be licensed as home health agencies or nurse registries, unless exempt from licensing under s. 400.464(5), F.S. Since the requirements for home health agency and nurse registry licensing in chapter 400, part IV, F.S., include the provision of skilled care, they are much more extensive than the simple registration of homemaker and companion agencies that only requires background screening.

In 1999, the Task Force on Home Health Services Licensure Provisions established by the Legislature reviewed information regarding programs in other states and found that 11 other

states regulated personal care as a simpler form of licensing than Florida's home health agency and nurse registry licensing. The Task Force recommended in its report to the Legislature that personal care services be added to homemaker and companion services. It is important for personnel who provide personal care to be trained in lifting, transferring, and bathing disabled persons for the safety of the clients.

The current fee of \$25 for registration of homemaker and companion services does not cover AHCA's costs for the administration of this program, including the investigation of complaints. There is no General Revenue or other funding for this program. The Agency for Health Care Administration's Health Care Trust Fund Cash Analysis for FY 2002-2003 shows the fee revenue received as \$85,717 but expenses were \$142,108. The cumulative deficit for this program is \$506,285.

Unlicensed Activity

The Agency for Health Care Administration receives complaints of unlicensed home health activity throughout the state. For the period July 1, 2002 through June 30, 2003, there were 31 complaints of unlicensed home health agencies, 5 complaints of unlicensed nurse registries, and 21 complaints of unregistered homemaker and companion services. Businesses found to be providing services without a license or registration are given a notice of violation and are directed to obtain a license. Some disregard the notices and continue operating. The existing laws in chapter 400, part IV, F.S., do not provide AHCA with sufficient enforcement authority to require the businesses either to get licensed or to cease operation. The Agency for Health Care Administration may seek an injunction under s. 400.515, F.S., only when there is an emergency affecting the immediate health and safety of a patient. Licensed providers complain to AHCA about unlicensed providers and have been frustrated that more action cannot be taken to require the providers to become licensed.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.461, F.S., to add nurse registries and personal care organizations to the list of providers for whom part IV of chapter 400, F.S., will provide licensure requirements.

Section 2. Amends s. 400.462, F.S., to modify and add definitions. The new definitions are as follows:

Admission means a decision by a home health agency during or after an evaluation visit to the patient's home that the patient's medical, nursing, and social needs can be addressed by the agency or registry in the patient's place of residence.

Advanced registered nurse practitioner means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003, F.S.

Direct employee means an employee for whom one of the following entities pays withholding taxes: a home health agency or personal care organization; a management company that has a contract to manage the home health agency or personal care organization on a day-to-day basis;

or an employee leasing company that has a contract with the home health agency or personal care organization to handle the payroll and payroll taxes for the home health agency.

Personal care organization means a business that is licensed to provide personal care, homemaker, and companion services by employed caregivers, but that does not provide skilled care services.

Physician assistant means a person who is a graduate of an approved program or its equivalent, or meets standards approved by the boards, and is licensed to perform medical services delegated by the supervising physician, as defined in s. 458.347, F.S., or s. 459.022, F.S.

Numerous definitions are modified to conform to changes made in the bill. The definition of “companion” or “sitter” is modified to replace “cares for” with “spends time with,” so that companions or sitters would not be authorized to provide any care to their clients.

Section 3. Amends s. 400.464, F.S., to provide for a 2-year license, to delete the option of registering, and to require all providers of services to be licensed. The penalty for unlicensed activities is increased from a second-degree misdemeanor to a third-degree felony. The bill establishes a fine of \$500 for a second or subsequent offense of operating without a home health agency license. Unlicensed activity is declared a nuisance, inimical to the public health, welfare and safety. The Agency for Health Care Administration and the state attorneys are permitted to bring action for an injunction to stop unlicensed activity.

Section 4. Amends s. 400.471, F.S., to modify the information an applicant must file by requiring that all documents demonstrating the applicant’s financial ability to operate must be compiled by, rather than signed by, a certified public accountant. Timeframes for the application process are changed to require submission of a renewal application 60 days, rather than 90 days, before the expiration date and to require AHCA to send a notice of a late fee 10 days after the date the renewal application was due.

The bill authorizes AHCA to levy an administration fine of \$50 per day up to a maximum amount of \$500 for a late-filed application. The bill requires an application fee that may not exceed \$2,000. The agency may accept the survey of an accrediting organization in lieu of its own periodic licensure survey if the license is not provisional and if the agency obtains a copy of the survey report. The bill authorizes a license-processing fee of \$1,000. The bill deletes the current exemption for state, municipal, and county governments that apply for a license.

Section 5. Amends s. 400.487, F.S., to specify that the sources of payment for home health services include Medicaid, Medicare, private insurance, personal funds, or a combination thereof. 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. The requirement that a registered nurse must perform a supervisory visit to the home of a patient receiving home health aide services is amended to require that the visit be conducted in accordance with the patient’s agreement to pay the charge for the visit.

Section 6. Amends s. 400.491, F.S., to require a licensed home health agency that ceases to remain in business, to notify each patient, whose clinical records it has in its possession, of the fact that it is ceasing operations and give each patient 15 calendar days to retrieve his or her clinical record at a specified location within 2 hours' driving time of the patient's residence and, at a minimum, between the hours of 10 a.m. and 3 p.m., Monday through Friday

Section 7. Amends s. 400.494, F.S., to require that patient information be disclosed only as authorized under the provisions of 45 C.F.R. ss. 160.102, 160.103, and 164, subpart A, the federal Health Information Portability and Accountability Act (HIPAA), except that clinical records regarding HIV testing, sexually transmissible diseases, cholesterol health risks, cancer, tuberculosis, mental health, trauma, substance abuse, and genetic testing described in ss. 381.004, 384.29, 385.202, 392.65, 394.4615, 395.404, 397.501, and 760.40 F.S., respectively, must be disclosed as authorized in those sections

Section 8. Amends s. 400.495, F.S., to add a personal care organization to the list of providers who must inform a home health services patient of the toll-free number for the central abuse hot line.

Section 9. Amends s. 400.497, F.S., to grant AHCA rulemaking authority for s. 400.5095, F.S., which is created in this bill, and specifies that the rules requiring onsite and electronic accessibility of supervisory personnel will apply to personal care organizations as well as to home health agencies.

Section 10. Amends s. 400.506, F.S., to increase the licensure fee for nurse registries to a maximum of \$2,000. The licensing of nurse registries is totally fee supported, and the current limit of \$1,000 will not cover all of AHCA's costs now and in future years.

Nurse registry licenses have been extended from one to two years. The fine for not including the nurse registry license number in any advertising has been increased so that the fine for second and subsequent offenses is \$500.

The penalties for unlicensed activity are specified and are the same as those described in Section 3 of this bill for home health agencies. Businesses are given 10 days to cease operation and apply for a license after notification from AHCA. The Agency for Health Care Administration and the state attorneys are permitted to bring action for an injunction to stop unlicensed activity. It is a felony of the third degree for businesses that do not apply for licenses. Businesses may also be fined \$500 per day for failure to cease operation after notification by AHCA.

Language requiring a nurse registry patient to be under a physicians' care when care is provided by a certified nursing assistant or a home health aide has been deleted. The requirement that notification be sent to the physician within 48 hours after completing the contract for care has also been deleted. These changes would accommodate persons who just need home health aide and CNA services and are not required to be under a physician's care.

Required monthly supervisory visits by an RN to nurse registry patients receiving non-skilled services from a certified nursing assistant or a home health aide are deleted.

Language incorporating physician assistants and advanced registered nurse practitioners writing treatment orders has been added to this section as was done for home health agencies in section 5 above.

Section 11. Effective July 1, 2005, repeals s. 400.509, F.S. that established the registration of homemakers and companion services by AHCA. Thus, businesses that provide only homemaker and companion services would no longer be registered. This section of the statutes is re-written as a licensing program with the addition of personal care in the next section.

Section 12. Effective July 1, 2005, creates s. 400.5095, F.S. that is much like the repealed s. 400.509, F.S., with the addition of personal care service and the licensing of personal care organizations. Personal care organizations, as defined in section 2, are businesses that provide personal care, homemaker and companion services by employed caregivers.

This section states that each operational site of the personal care organization must be licensed unless there is more than one site in a county. This is similar to the requirements for home health agencies and nurse registries in this part of chapter 400, F.S.

Level 2 background screening in accordance with chapter 435, F.S., of the managing employee and financial officer, or similarly titled individuals, is required for personal care organizations as is required for homemaker and companion agencies. Others who are applicants may be screened if AHCA has reason to believe that the person has been convicted of an offense prohibited under level 2 standards in chapter 435, F.S. Applicants must submit information on any prior offenses as well as exclusions from the Medicare or Medicaid programs. Volunteer board members are excluded from being screened if they submit a statement affirming this with the application. A provisional license may be issued when the Florida Department of Law Enforcement standards are met, pending FBI results. The requirements are the same as those previously required for homemaker and companion services and are already in part IV of chapter 400, F.S., for home health agencies and nurse registries. The level 2 screening is also required for other health facilities licensed by AHCA.

The Agency for Health Care Administration is to establish the appropriate licensure fee in rule, based on the cost of regulation, not to exceed \$1,800. Applications for renewal of the license are due 60 days before the expiration of the license. The bill established a late fee of \$50 per day for organizations that fail to file an application for renewal of a license. The aggregate late fee may not exceed \$500. The reasons for denial or revocation of a license are specified and are the same as those currently in statutes for the homemaker and companion registration; except that falsely representing a material fact pertains to all material facts in the application, not just level 2 offenses and exclusions from Medicare and Medicaid.

Businesses providing services without a license may be subject to an injunction. The license number must appear in any advertising or a fine is assessed: first offense is \$100 and any subsequent offense is \$500. This fine is currently permitted in part IV of chapter 400, F.S., for homemaker and companion services, home health agencies and nurse registries. The same increase in fine for subsequent offenses is included in section 3 of this bill for home health agencies and nurse registries.

The penalties for unlicensed activity are specified and are the same as those described in Sections 3 and 10 of this bill for home health agencies and nurse registries. Unlicensed activity is declared a nuisance, inimical to the public health, welfare and safety, and is a violation of the Florida Deceptive and Unfair Trade Practices Act. Businesses are given 10 days to cease operation and apply for a license after notification from AHCA. The Agency for Health Care Administration and the state attorneys are permitted to bring action for an injunction to stop unlicensed activity. It is a felony of the third degree for businesses that do not apply for licenses. Businesses may also be fined \$500 per day for failure to cease operation after notification by AHCA.

The Agency for Health Care Administration is given authority to make inspections and investigations to respond to complaints and determine compliance with state law and rules. The Agency for Health Care Administration is to make a report to law enforcement if there is reason to believe a crime has been committed and must also report abuse, neglect and exploitation as required in chapter 415, F.S.

Personal care services are to be provided by trained home health aides and certified nursing assistants. Tasks that may be done are specified. Supervisory visits by a registered nurse may be made if approved by the patient.

All staff must provide documentation to the personal care organization that they are free from communicable disease as well as their education and employment history, date of birth and social security number. These files are open to inspection by AHCA. The names and addresses of persons receiving personal care services must also be maintained. All files must be kept for a minimum of three years after the date of the last file entry of information concerning a patient.

This section includes the same information and training requirements on Alzheimer's disease and dementia-related disorders already passed by the 2002 Legislature for home health agency personnel. Similar information and training requirements are also in statutes for personnel of hospices, adult day care centers, assisted living facilities and nursing homes. A personal care organization must provide information to all employees on interacting with patients with Alzheimer's disease and related disorders. Staff providing direct care must complete 2 hours of training within 9 months of employment. Employees hired after July 1, 2005, must complete the training. The Department of Elderly Affairs must approve the training and is to adopt rules for the standards for the training and trainers as they have already done for other health facilities. Personal care organizations whose patient census is comprised of at least 90 percent of individuals less than 21 years of age are exempt from this requirement.

The requirements in s. 400.4785, F.S., for disclosure by agencies that advertise as providing special care for persons who have Alzheimer's disease and related disorders are included in this section. Personal care organizations that advertise providing such special care will have to disclose in their advertising or in a separate document those services that distinguish the care as being especially applicable for patients with dementia. The Agency for Health Care Administration is required to examine such advertisements and documents as part of the license renewal process.

The emergency management requirements in s. 400.492, F.S., for home health agencies are included in this section. Each personal care organization must assist persons who would need evacuation and shelter in registering with the appropriate local emergency management agency as required for all community agencies in s. 252.355, F.S. The personal care organization must also prepare a comprehensive emergency management plan according to requirements in this section and update it annually. Patient records must include a description of how care will be continued during an emergency. The personal care organization must provide a prioritized list of patients who are registered with local emergency management agencies. A list of each registered patient's medication and equipment needs must be available to the county health departments and local emergency management agencies. A home health aide or certified nursing assistant is not required to continue to provide care in emergency situations that make it impossible to provide care. The Agency for Health Care Administration must work with the Department of Health and the Department of Community Affairs to adopt rules establishing minimum criteria for emergency management plans as they have done for home health agencies.

Personal care organizations are also required to inform patients of the toll-free number to report abuse as required in s. 400.495, F.S.

The Agency for Health Care Administration is permitted to assess costs for investigation of complaints that result in a successful prosecution, excluding costs associated with an attorney's time. The same language is currently in the statutes for homemakers and companions, nurse registries and home health agencies.

The bill defines four levels of deficiency in patient care to establish a method for assessing fines for deficiencies in patient care that cause, or may cause, harm, as follows:

- *A class I deficiency* is any act, omission, or practice that results in a patient's death, disablement, or permanent injury, or places a patient at imminent risk of death, disablement, or permanent injury. Upon finding a class I deficiency, the agency may impose an administrative fine in the amount of \$5,000 for each occurrence and each day that the deficiency exists. In addition, the agency may immediately revoke the license, or impose a moratorium on the admission of new patients until the factors causing the deficiency have been corrected.
- *A class II deficiency* is any act, omission, or practice that has a direct adverse effect on the health, safety, or security of a patient. Upon finding a class II deficiency, the agency may impose an administrative fine in the amount of \$1,000 for each occurrence and each day that the deficiency exists. In addition, the agency may suspend the license, or impose a moratorium on the admission of new patients, until the deficiency has been corrected.
- *A class III deficiency* is any act, omission, or practice that has an indirect, adverse effect on the health, safety, or security of a patient. Upon finding an uncorrected or repeated class III deficiency, the agency may impose an administrative fine not to exceed \$500 for each occurrence and each day that the uncorrected or repeated deficiency exists.
- *A class IV deficiency* is any act, omission, or practice related to required reports, forms, or a document which does not have the potential of negatively affecting patients. These violations are of a type that the agency determines do not threaten the health, safety, or security of patients. Upon finding an uncorrected or repeated class IV deficiency, the agency may

impose an administrative fine not to exceed \$200 for each occurrence and each day that the uncorrected or repeated deficiency exists.

Section 13. Amends s. 400.512, F.S., relating to the background screening of personnel, to replace references to homemakers and companions with personal care organization personnel.

Section 14. Amends s. 400.515, F.S., on injunction proceedings, to add that AHCA may seek an injunction to stop the continued operation of any home health agency, nurse registry or personal care organization that is operating without a license or that violates any provision of this part or related rules. The current statutes limit injunctions to emergencies affecting the immediate health and safety of a patient.

Section 15. Permits AHCA to issue a license to a home health agency, nurse registry, or personal care organization for a period of less than 2 years and to charge prorated licensure fees between July 1, 2005 and June 30, 2006.

Section 16. Except as otherwise provided in the bill, the bill will take effect July 1, 2004.

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 this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 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. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Homemaker and companion organizations that were registered by AHCA will have to pay a licensure fee under the requirements of this bill.

B. Private Sector Impact:

Homemaker and companion organizations that were registered by AHCA will incur the cost of licensure if they wish to remain in business.

C. Government Sector Impact:

Sections 4 and 10 of the bill increase the licensure time period for home health agencies and nurse registries and increase the fees to cover AHCA's costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
